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In The

Supreme Court of the United States

October Term, 1973

No.

JIM BUCKLEY and AL GOLDSTEIN,
Petitioners,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

Petition for a Writ of Certiorari to the Court of Appeals for the State of New York

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Petitioners Jim Buckley and Al Goldstein pray that a Writ of Certiorari issue to review the judgment of the New York Court of Appeals entered on December 28, 1973.

Opinions Below

The opinion of the court of appeals is reported at 33 N.Y.2d 314, 352 N.Y.S.2d 601, and is reprinted with the remittitur in Appendices A and B. The appellate term wrote no opinion, but the order of affirmance is reported at 72 Misc.2d 549, 340 N.Y.S.2d 191, and is reprinted in Appendix C. The opinion of the Criminal Court of the City of New York is reported at 65 Misc.2d 917, 320 N.Y.S.2d 91, and is reprinted in Appendix D.

Jurisdictional Statement

Petitioners were found guilty of violating §235.05 of the New York Penal Law, promoting obscenity, after a trial before a three-judge bench in the Criminal Court of the City of New York on March 22, 1971. The Appellate Term for the First Department affirmed petitioners' convictions on December 7, 1972.

The New York Court of Appeals, divided four to three, affirmed the convictions on December 28, 1973. Mr. Justice Marshall granted an extension of time to file this petition until April 27, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Questions Presented

1. Whether the newspaper *Screw* is constitutionally protected under the first amendment to the United States Constitution.

2. Whether New York has failed to comply with the *Miller* mandate in construing its obscenity statute.

Constitutional Provision Involved

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Statutes Involved

Penal Law, §235.00 Obscenity; definition of terms.

* * *

1. "Obscene." Any material or performance is "obscene" if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and (b) it goes substantially beyond customary limits of candor in describing or representing such matters, and (c) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

* * *

Penal Law, §235.05 Obscenity in the second degree.

A person is guilty of obscenity in the second degree when, knowing its content and character, he:

1. Promotes, or possesses with intent to promote, any obscene material; or

2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

Obscenity in the second degree is a class A misdemeanor.

Statement of Facts

Petitioners publish and distribute an underground newspaper bearing the colorful name *Screw*. During the months of May, July and August of 1969, a New York City police officer purchased six issues of this newspaper and charged petitioners with promoting obscenity in violation of the New York Penal Law.[1]

The newspaper, following the standard tabloid format, consists of editorials on censorship,[2] the women's liberation movement,[3] the Scandanavian experiment of abolishing all restrictions on reading material,[4] the sexual revolution in Frankfurt, Germany,[5] and the gay liberation movement.[6] *Screw* contains reviews of plays such as *DeSade Illustrated*,[7] and motion pictures like *Poppi*[8] and *Without a Stitch*,[9] as well as critiques of books dealing with sex. Other special features deal with the thermo-dynamics of sex attitudes today, such as a commentary by a prominent attorney concerning this country's young people who have found society unresponsive to their legitimate demands,[10] an article by one of the editors on

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[1]Sections 235.00 and 235.05. The issues charged are Nos. 14, 15, 17, 22, 23, 24.

[2]Issue No. 23, at 13.

[3]Issue No. 22, at 11.

[4]Issue No. 23, at 5.

[5]Issue No. 17, at 6.

[6]Issue No. 14, at 6.

[7]Issue No. 14, at 11.

[8]Issue No. 15, at 7.

[9]Issue No. 23, at 9.

[10]Issue No. 15, at 6.

the state of tabloid newspapers analyzing the sex and violence portrayed in those publications,[11] a piece on the New York City mayoralty compaign discussing the sexual appeal of the candidates,[12] and a weekly column entitled *The Homosexual Citizen* which discusses that minority's problems. The paper also carries commercial advertisements and personal classified ads presumably placed by those seeking sexual association with others.

Although men and women are pictured in the nude with their genitalia exposed, there are no photographs of explicit sex acts. Some of the articles in this newspaper written by young authors are nourished by the use of four-letter words to emphasize their outrage with some of our society's failures.

Screw's circulation has been as high as 70,000 in New York City, and it is mailed to every major city in the United States (1437).[13] Over twenty colleges and universities subscribe to it including the Universities of Michigan and Illinois (1438).[14]

Redeeming Social Value

A formidable battery of experts testified that *Screw* had redeeming social value, did not appeal to the average person's prurient interest and did not fall substantially below contemporary community standards. Among the experts who spoke on the newspaper's behalf were:

> Paul D. Zimmerman — former editor of *Newsweek* (824);

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[11]Issue No. 24, at 4-5.

[12]Issue No. 15, at 4.

[13]Refers to the printed record in the New York Court of Appeals.

[14]Sammy Davis, Jr. acknowledged subscribing to *Screw* in a recent interview entitled *People, Inc.*, which appeared in the *Miami Herald* on March 24, 1974.

George Strade — University of Columbia English professor (858);

Herb Altman — film producer; produced *The Ben Gurion Story* and *The Lenny Bruce Story* (1079);

Edward R. Silverman — radio and television news producer for the American Broadcasting Company (605);

Sol Gordon — clinical psychologist from Syracuse University (1192);

William Glenesk — a Presbyterian minister (667);

Richard Brown — a teacher of film production at New York University (1042).

Against this impressive array of experts, who uniformly vouched for *Screw* magazine, the prosecution was able to find only three witnesses who would speak against it — Philip Capotorto, a pizza salesman; Raymond Schroth, a Jesuit priest; and Ernest Van der Haag, a New York University professor.[15] Van der Haag and Schroth admitted that the newspaper had some redeeming value.

Both Jim Buckley and Al Goldstein testified in defense of their paper stating, "We try to tell the truth, and we try to report what's happening in the United States, sexually. . . . [The newspaper is] very affirmative in its approach to sex and [does] not treat it as though it were some disease or terrible condition of man" (1239, 1240, 1450). Goldstein stated that he viewed his newspaper "as the purest form of an idea" (1263). Both men expressed their confidence in the American people as being mature enough to pick and choose, to recognize trash when they see it and to read only that literature which satisfies their deepest

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[15]Mr. Van der Haag had previously testified for the New York County District Attorney's office in the Lenny Bruce case which, as this Court knows, was ultimately reversed *sub nom. People* v. *Solomon*, 26 N.Y.2d 621, 307 N.Y.S.2d 464, 255 N.E.2d 720 (1970).

needs. As indicated, the criminal court found *Screw* obscene and the appellate term affirmed.

New York Court of Appeals Opinion

The New York Court of Appeals, dramatically divided four to three, found *Screw* obscene because, "The issues in evidence are crammed with photographs of naked men and women engaged in homosexual and heterosexual acts, in many instances with genitals prominently and lewdly displayed" (A-14). Each issue of *Screw* contains twenty-six pages and averages only five pages of photographs exposing a man or woman's genitalia.

The court criticized this newspaper because, "Drawings and cartoons, are also explicit, exaggerating sexual activity to preposterous degrees. . . . Many of the articles are totally sex oriented and are written in the most graphic terms." (*Ibid.*) The court considered *Screw's* advertising "egregious." (*Ibid.*)

The bulk of the court of appeals opinion is devoted to constitutionalizing New York's obscenity statute by construing it to proscribe only hard-core pornography. That statute, however, does not specify the forms of sexual depiction sought to be suppressed.

Reasons for Granting the Writ

I

The New York Court of Appeals' decision is in conflict with this Court's rulings defining the constitutional limits on a state's power to suppress the distribution of literature.

Petitioners have been condemned to criminal convictions for merely publishing an unconventional newspaper which criticizes a middle-aged government's outmoded sex attitudes. That simple statement suggests the awful solemnity of the occasion which brings us to this Court. For if these convictions are sustained, hundreds of underground newspapers, such as the *Village Voice*, the *L.A. Free Press*, the *Washington Free Press*, to name only a few, will be endangered. Furthermore, the majority opinion of the New York court is so patently at odds with the controlling decisions of this Court and is such a serious threat to the continuing vitality of those authorities as to call for immediate corrective action.

The first amendment protection which cloaks the sale and distribution of this newspaper is made abundantly clear by an unbroken line of cases decided by this Court extending all the way back to *Redrup* v. *New York*, 386 U.S. 767 (1967). Applying to this publication any one of the established tests of obscenity, *i.e.*, this Court's old *Roth-Memoirs* formula, or the newly designed *Miller*[16] formula, or New York's hard-core pornography standard, leads inescapably to the conclusion that this newspaper is not obscene as a matter of law.

Implicit in the lower court opinions is a forced acknowledgment that many of the articles, editorials and commentaries are of conceded social importance (A-14, D-5). Unquestionably, the dominant theme which runs relentlessly throughout this newspaper is one of dissent, libertarianism and anti-establishment protest in every form. Its dominant character is not prurient but polemic. *Screw* is not thematically obscene.

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[16] *Miller* v. *California*, 413 U.S. 15 (1973).

Four-letter words are used deliberately as shock weapons in this war of protest against established ideas about sex. The publication has only violated the word taboos of gentility. The arousing of disgust in a voluntary audience is an impossibly trivial basis for condemning a legitimate newspaper that expresses bona fide views on subjects of social importance. Indeed, *The Exorcist*, a film filled with explicit sex scenes and dedicated to inducing nausea, demonstrates how literally millions of people in our society do not consider such things obscene. And *Screw* contains no such explicit sex scenes.

The personal classified ads, constituting two pages of the newspaper, are not obscene per se and do not approach the bad lands of hard-core pornography. The same may be said of the commercial ads. *Manual Enterprises, Inc.* v. *Day*, 370 U.S. 478 (1972); *United States* v. *Watson*, 293 F.Supp. 694 (W.D.Mo. 1968).[17]

Virtually every underground magazine similar to *Screw*, litigated in this country, has been found not obscene[18] and this

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[17] In *Manual Enterprises, Inc.* v. *Day, supra*, this Court had before it a number of male homosexual magazines which contained provocative ads. The Court held that a publisher who carries advertisements cannot be held responsible for the products sold by a third party advertiser. In our case there is absolutely no proof that any of the items offered for sale were in fact purchased, and absolutely no evidence was presented showing that a reader of *Screw* interested in sexual union with another person ever responded to the ads, let alone reacted to them. None of the sexual products sold were distributed by *Screw*.

[18] *Papish* v. *University of Missouri Board of Censors*, 410 U.S. 667 (1973), underground newspaper containing cartoon depicting the rape of the Statue of Liberty and a headline containing a well-known "12-letter" word. The majority of this Court held that the cartoon and headline were not obscene.

Kois v. *Wisconsin*, 408 U.S. 229 (1972), underground newspaper entitled *Kaleidoscope* containing photographs of nude couples embracing one another held not obscene.

Dyson v. *Stein*, 401 U.S. 200 (1971), underground newspaper called *Dallas Notes* found not obscene; court reversed on prior restraint issue.

Kois v. *Breier*, 312 F.Supp. 19 (E.D. Wis. 1970), court would not permit interference with the production of the Broadway musical *Hair*.

[Footnote continued on following page]

Court has consistently held that the mere display of male or female genitalia, no matter how lewdly, is not obscene.[19] The few pictures in *Screw* are less explicit than those found protected by this Court and the magazines or films in those cases did not attempt to comment on public issues in the fashion *Screw* does.

[Footnote continued from preceding page]

State v. *Keyhole Publishing Company*, 3 Conn. Cir. 354, 314 A.2d 838 (1965), tabloid newspaper called *Keyhole* found not obscene.

Bennett v. *Maryland*, 273 A.2d 461 (1971), *Quicksilver Times* held not obscene.

Dillingham v. *Maryland*, 267 A.2d 777 (1970), *Washington Free Press* held not obscene.

Woodruff v. *Maryland*, 11 Md.App. 202, 273 A.2d 436 (1971), an issue of the *Washington Free Press* held not obscene.

Panarella v. *Birenbaum*, 32 N.Y.2d 108, 343 N.Y.S.2d 333 (1973), court held school administrators could not interfere with the publication of campus newspaper entitled *The Dolphin*.

See also Southeastern Promotions, Ltd. v. *Conrad*, 486 F.2d 894 (6th Cir. 1973), *cert. granted*, 42 U.S.L.W. 3388 (73-1004, January 8, 1974); *Southeastern Promotions, Ltd.* v. *City of Atlanta*, 334 F.Supp. 634 (N.D.Ga. 1971), and cases cited therein; *United States* v. *Head*, 317 F.Supp. 1138 (E.D.La. 1970); *Henley* v. *Wise*, 303 F.Supp. 62 (N.D.Ind. 1969); *Washington Free Community* v. *State's Attorney*, 300 F.Supp. 487 (D.Md. 1969); *Great Speckled Bird of Atlanta* v. *Stynchcombe*, 298 F.Supp. 1291 (N.D.Ga. 1970).

[19] *Wiener* v. *California*, 404 U.S. 988 (1971), four 16mm films showing women engaged in simulated sexual conduct found not obscene.

Hartstein v. *Missouri*, 404 U.S. 988 (1971). The Supreme Court of Missouri, in discussing the film entitled *Night of Lust*, concluded:

> "By reason of the close-up scenes, and by use of nude body gyrations and undulations, the motion picture suggests promiscuous sexual intercourse and homosexual activity which is totally unrelated to any plot." (496 S.W.2d 329, 337)

California v. *Pinkus*, 400 U.S. 922 (1970), a stag movie graphically depicting a woman engaged in masturbation held to be not obscene.

Bloss v. *Dykema*, 398 U.S. 278 (1970), female genitalia blatantly and lewdly displayed, found not obscene.

[Footnote continued on following page]

Screw vs. *Candid*

In 1967 this Court found not obscene a magazine called *Candid*, Issue No. 8. *Carlos* v. *New York*, 396 U.S. 119 (1969). We have reproduced *Candid* in Appendix E[20] and issue number 23 of *Screw* in Appendix F. A comparison of this publication with *Screw* leads to the irresistible conclusion that the latter cannot constitutionally be adjudged obscene. The two publications are identical, except *Candid's* ads for sex devices and "stag" movies are more prolific and extravagant than those in *Screw*. The personal classified ads in *Candid* are similar to those in *Screw*. Statistically, *Candid* has a total of 44 photographs of women in the nude, whereas *Screw* only has ten.

The significant difference between the two publications is *Screw's* more serious articles, commentaries and reviews. For instance, in the annexed issue of *Screw*, the following articles appear:

> (1) An article discussing the impact of the abolition of censorship in Denmark. The author states, "Sex crimes in Copenhagen have dropped 34% while other crime rates are increasing.... Sales of pornography have decreased according to the book publishers' association.

[Footnote continued from preceding page]

Henry v. *Louisiana*, 392 U.S. 555 (1968), eleven "girlie" magazines found not obscene.

Fenton v. *Pensacola*, 390 U.S. 340 (1968), twenty-six nudist magazines containing numerous pictures of the male and female genitalia openly exposed in lewd poses held not obscene.

Central Magazine Sales Ltd. v. *United States*, 389 U.S. 50 (1967), *rev'g United States* v. *392 Copies of a Magazine Entitled "Exclusive,"* 373 F.2d 633 (4th Cir. 1967). The Fourth Circuit described the photographs in the challenged magazine as follows:

> "Some of the seated models, squarely facing the camera, have their knees and legs widespread in order to reveal the genital area in its entirety." (373 F.2d at 634)

[20] A reproduction of this publication was attached to the petition for certiorari in *Carlos* v. *New York*, October Term, 1969, No. 524.

. . . porno merchants have gone out of business and those remaining have been forced to cut prices and raise quality." (F-5)

(2) King of Pornography — an interview with the owner of a porno bookstore in Copenhagen. The author declares, "Madsen enjoyed *Screw* very much, but admitted that our humor did not fit into serious pornography since it destroyed the phantasy level needed to maintain a hardon. Laughter he claimed is anti-erotic, and I tend to agree with him, which is further reason to make our alleged 'obscenity' even more ridiculous." (F-7)

(3) A review of the motion picture *Without a Stitch* found not obscene in *United States* v. *Three Cartons, More or Less, of a Motion Picture Film Entitled "Without a Stitch,"* U.S.D.C., C.D. Cal., Civ. No. 69-2041-AAH, December 12, 1969. (F-9)

(4) An editorial on whether the Scandinavian experiment abolishing censorship would succeed in this country. (F-13)

(5) An article on homosexuality in Denmark in which the author states, "The laws in Denmark and Sweden are quite civilized for homosexuals, although still not quite equal. . . . Danish and Swedish newspapers carry ads for homosexual lovers, . . ." (F-16)

(6) An illustrated article on the first international exhibition of erotic art in Lund, Sweden. (F-17, 18)

This comparison of publications, which could be extended with reference to other magazines cited in footnotes 17 and 18, *supra*, mandates that these issues of *Screw* are entitled to constitutional protection in the same fashion as those publications cleared in the unbroken series of cases extending from *Redrup* to *Weiner*, n. 18 *supra*.

New York has simply refused, without justification or elaboration, to give effect to the steady line of cases decided by this Court respecting the constitutional right to distribute

literature which may be thought by some to be in "poor taste," "unrefined," "trashy" or "of little educational value" — but not obscene in the constitutional sense.[21] *See Carlos* v. *New York*, 396 U.S. 119 (1969); *Avansino* v. *New York*, 388 U.S. 446 (1967); *Sheperd* v. *New York*, 388 U.S. 444 (1967); *Cobert* v. *New York*, 388 U.S. 443 (1967); *Friedman* v. *New York*, 388 U.S. 441 (1967); *Keney* v. *New York*, 388 U.S. 440 (1967); and *Hannigan* v. *Esquire*, 327 U.S. 146 (1946).

Furthermore, this controversial New York ruling is bound to sponsor widescale prosecutions throughout the state aimed at repressing as obscene a variety of similar publications. Indeed, on many campuses school officials have invoked obscenity provisions to punish faculty or students for distributing materials which in no legitimate way could be characterized as "obscene."[22]

The situation is thus one where New York courts and prosecutors need to be reminded that the constitutional standards and protections in this critical area of free speech have not been repealed by *Miller*.

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[21] We must never forget that the much-maligned Commission on Obscenity and Pornography concluded, in regard to adults:

> "Extensive empirical investigation, both by the Commission and by others, provides no evidence that exposure to or use of explicit sexual materials play a significant role in the causation of social or individual harms such as crime, deliquency, sexual or non-sexual deviancy, or severe emotional disturbances. The Commission further discovered that the erotic is a source of information and entertainment and public opinion does not support its suppression and repression threatens communication and speech." (*Report of the Commission on Obscenity and Pornography* at 58 [1970])

Clearly, a moral stance on obscenity is no longer justified.

[22] For example, in New York school officials removed from a school library a book describing ghetto life entitled *Down These Mean Streets* in part because of the complaints that it contained "obscenities and explicit sexual interludes." *Presidents Council, Dist. 25* v. *Community School Board No. 25*, 457 F.2d 289 (2d Cir. 1972), *cert. denied*, 409 U.S. 998 (1972). *See also Panarella* v. *Birenbaum*, 32 N.Y.2d 108, 343 N.Y.S.2d 333 (1973).

The *Hamling* and *Jenkins* Cases

On April 15, 1974 this Court heard argument in *Hamling* v. *United States*, No. 73-507, and *Jenkins* v. *Georgia*, No. 73-557, involving the *Illustrated Report on the Commission of Obscenity and Pornography* and the motion picture *Carnal Knowledge*. This case fits well within the company of *Jenkins* and *Hamling*, and thus, deserves the same consideration. Surely the photographs in *Hamling* are far more explicit and offensive than those contained in *Screw*. Similarly, the social commentaries in our newspaper are far more serious than the underlying message of the film *Carnal Knowledge*. Thus, this petition should be granted.

II

New York has failed to comply with the *Miller* mandate in construing its obscenity statute.

In *Miller* v. *California*, 413 U.S. 15 (1973), this Court decreed that an obscenity statute is unconstitutional unless it specifically defines the sexual descriptions sought to be suppressed. Under this mandate the New York statute is patently unconstitutional because it fails to classify any of the proscribed sexual descriptions. New York's attempt to rescue this law by construing it in accordance with the dictates of *Miller* has failed dismally.

The objective of *Miller* was to provide the public, and particularly publishers, with "fair notice" by "specifically defining" the kinds of sexual conduct which cannot be portrayed. This Court concluded that the establishment of "concrete guidelines to isolate 'hard-core' pornography" would make the subject of obscenity more manageable. Thus, specificity is essential to the success of this new doctrine.[23]

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[23] For this reason the Court encouraged "concrete legislative efforts." However, the Court acknowledged that statutes may be construed to meet the requirements of *Miller*, but certainly such construction must tabulate the various forms of sexual description sought to be disallowed.

Defying *Miller*'s dictates, the New York Court of Appeals has merely interpreted New York's obscenity law to proscribe "hard-core" pornography without detailing the sexual components of that elusive concept.[24] The New York court stressed:

> "In sum, our obscenity statute is sufficiently specific and well within the ambit of the lines laid down in *Miller*. Very simply put, it prohibits commercial exploitation of hard core pornography, a term, employing a State standard we have employed and continue to employ, which does not go beyond those examples set forth in *Miller* and which, in fact, contemplates material of no redeeming value whatsoever." (A-13)

The glaring deficiency in the court's opinion is its failure in the past, and now, to define hard-core pornography. The residents of New York and particularly those in the publishing business are no better advised today of what cannot be distributed or printed than they were before. The term hard-core pornography as applied in New York is no more specific than the other subliminal terms used to test obscenity. Generic terms such as "obscene," "lewd," and "patently offensive" lack specificity and, consequently, are inoperative in assessing obscene materials. Accordingly, article 235 is unconstitutional as construed and must be so declared.

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[24]The majority of the court of appeals loosely stated:

> "Hard-core pornography consists of 'Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated [and/or] Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.' [citing *Miller*]." (A-9)

The majority merely adopted the random sampling of several types of sexual descriptions which this Court concluded could be constitutionally proscribed. However, this Court never meant that such a sampling was exhaustive. The New York court apparently attempting to incorporate by reference the few examples given by this Court stated ". . . exactly that sort of thing described in the *Miller* opinion." This inadequate specification falls far short of the type of classification of sexual descriptions demanded by *Miller*.

Finally, in 1969 the publishers of *Screw* were never given fair notice by New York's obscenity statute concerning what could not be printed. The law of obscenity in New York was in a shambles and, contrary to the court of appeals' brave pronouncements, did not clearly define the forms of sexual portrayal condemned by law.[25] Thus, under *Bouie* v. *City of Columbia*, 378 U.S. 347 (1964), which prohibits retrospective application of the judicial enlargement of a criminal statute, petitioners' convictions cannot stand. *See Rabe* v. *Washington*, 405 U.S. 313 (1972); *Shuttlesworth* v. *Birmingham*, 394 U.S. 147 (1969); *James* v. *United States*, 366 U.S. 213 (1961). Petitioners' convictions violate due process and, therefore, this writ should be granted.

Conclusion

History has taught us that the main restraining force on official misconduct is a free and independent press. Although the exposure of political espionage, such as the dreadful Watergate incident, has a wider range of public concern, complaints about the mistreatment of homosexuals, criticism of censorship and the review of sex films should be available to those who wish to read about these subjects. The state has no right to sterilize this form of public debate by striking down this newspaper and calling it obscene. This case confirms our worst suspicions about how official repression can be used to discourage dissent. If this decision is allowed to stand uncorrected, it will be surely used as a legal mace to club down other newspapers found to be offensive to the power elite in our society.

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[25]For that matter, a majority of the New York Court of Appeals adopted the *Roth-Memoirs* test and used it in judging the propriety of the *Blue Movie*. *People* v. *Heller*, 29 N.Y.2d 319, 327 N.Y.S.2d 628 (1971). *See also People* v. *Carlos*, 24 N.Y.2d 865, 301 N.Y.S.2d 96 (1969), where the court found *Candid* obscene involving absolutely no sex acts but mere nudity. This Court using the *Roth-Memoirs* formula reversed that judgment in *Carlos* v. *New York*, 396 U.S. 119 (1969).

There are those who undoubtedly believe that petitioners should have their mouths washed out with soap for their use of four-letter words in emphasizing their complaints. The discomfort caused by this profanity is a necessary side effect "of the larger enduring values which the process of open debate permits us to achieve." *Cohen* v. *California*, 403 U.S. 15, at 25 (1971)

Protest must be heard or read if it is to have any social utility, for freedom of speech is indivisible. We cannot deny it to *Screw* and save it for the *New York Times*. It must exist for all or eventually it may exist for none. For all these reasons the petition for certiorari should be granted.

Respectfully submitted,

Herald Price Fahringer, Esq.
Lawrence A. Schulz, Esq.
Counsel for Petitioners
One Niagara Square
Buffalo, New York 14202
(716) 856-8400

Lipsitz, Green, Fahringer,
Roll, Schuller & James
of Counsel.

APPENDIX A

Court of Appeals Opinion

A-1

Court of Appeals Opinion

GABRIELLI, Judge.

Our major concern in the consideration of these cases is the constitutionality of certain of those sections of the Penal Law which deal with obscenity and pornography.

The appellants in each of these cases were convicted of misdemeanors because of their violations of section 235.05 of the Penal Law, which prohibits the promotion or production of obscene material. We have treated with the *Heller* case previously, deciding that the film "Blue Movie" was obscene within section 235.00 of the Penal Law, the statute which defines the meaning of obscenity (People v. Heller, 29 N.Y.2d 319, 327 N.Y.S.2d 628, 277 N.E.2d 651). We also decided in that case that it was proper for a judicial officer authorized to issue warrants, who had viewed the film and found it obscene, to issue a valid warrant for the film's seizure as evidence in a prosecution against the exhibitor, without first conducting an adversary hearing on the issue of probable obscenity.

Heller was taken to the United States Supreme Court, and during its pendency that court handed down together five obscenity cases in which a revised obscenity test was adopted by a majority of five Justices (Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419; Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446; United States v. 12 200-Ft. Reels of Film, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500; United States v. Orito, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513; Kaplan v. California, 413 U.S. 115, 93 S.Ct. 2680, 37 L.Ed.2d 492).

Shortly following the decisions in those cases the *Heller* decision was handed down. Five Justices affirmed our determination of the procedural matter concerning the seizure of the film, but vacated our

affirmance of defendant's conviction on instructions to reconsider the substantive issues in light of the lead cases, *Miller* and *Paris Adult Theatre I*, already referred to, redefining the limits of obscenity prosecutions (Heller v. New York, 413 U.S. 483, 93 S.Ct. 2789, 37 L.Ed.2d 745). Four Justices considered section 235.00 "unconstitutionally overbroad" and therefore invalid on its face (p. 495, 93 S.Ct. 2789; and see Justice Douglas's separate dissent at 413 U.S., p. 494, 93 S.Ct. 2789).

The *Buckley* case is in this court for the first time. Defendants were convicted by a three-Judge Criminal Court panel for publishing and disseminating a tabloid type newspaper determined to be obscene entitled *Screw* (65 Misc.2d 917, 320 N.Y.S.2d 91). Defendants, publishers and editors of the tabloid, were found guilty on each of six counts and were fined $250 or 30 days imprisonment on each count. Appellate Term for the First Department unanimously affirmed without opinion (72 Misc.2d 549, 340 N.Y.S.2d 191) and leave to appeal to this court was granted. During the pendency of the *Buckley* case in this court the Supreme Court decided the afore-mentioned cases headed by *Miller*, and thus the merits of the prosecution against the *Buckley* defendants will also be considered in light of the *Miller* redefinition.

Our primary task is to determine the constitutionality of section 235.00 of the Penal Law in terms of whether it comports with the *Miller* decision and is sufficiently definite to satisfy the "void-for-vagueness" test. The question whether obscenity is within the protection of the First Amendment to the United States Constitution, or whether it should or should not be so protected, is not in this case. The Supreme Court and this court have regularly and consistently held traffic in obscene materials to lie beyond the limits of First Amendment coverage (Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, *supra*; Kois v. Wisconsin, 408 U.S. 229, 92 S.Ct. 2245, 33 L.Ed.2d 312; United States v. Reidel, 402 U.S. 351, 91 S.Ct. 1410, 28 L.Ed.2d 813; Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498; People v. Heller, 29 N.Y.2d 319, 327 N.Y.S.2d 628, 277 N.E.2d 651, *supra*; People v. G. I. Distrs., 20 N.Y.2d 104, 281 N.Y.S.2d 795, 228 N.E.2d 787, cert. den. 389 U.S. 905, 88 S.Ct. 218, 19 L.Ed.2d 219; People v. Richmond County News, 9 N.Y.2d 578, 216 N.Y.S.2d 369, 175 N.E.2d 681). As Chief Justice Burger said in the *Paris Adult Theatre I* case: "The States, of course, may follow such a 'laissez faire' policy and drop all controls on commercialized obscenity, if that is what they prefer, just as they can ignore consumer protection in the marketplace, but nothing in the Constitution *compels* the States to do so with regard to matters falling within state jurisdiction." (413 U.S., at p. 64, 93 S.Ct., at p. 2639; emphasis as in original.) The fact is that the people of the State of New York, through their elected representa-

tives, have chosen to curb the commercial promotion and sale of obscene material, a perfectly valid exercise.

The second question is whether the published material falls within the statutory ban, a point already decided against the defendant by this court in *Heller* (29 N.Y.2d 319, 327 N.Y.S.2d 628, 277 N.E.2d 651, *supra*).

I

It is necessary at this point to undertake an analysis of Chief Justice Burger's thesis as set forth primarily in the *Miller* and *Paris Adult Theatre I* cases. The Chief Justice first reviewed the key decisions leading to the established test for obscenity (Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, *supra*; Memoirs v. Massachusetts, 383 U.S. 413, 86 S.Ct. 975, 16 L.Ed.2d 1), that test being whether "(a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value." (set forth in the *Memoirs* case, 383 U.S., at p. 418, 86 S.Ct., at p. 977).

The third element of the test thus laid down in *Memoirs* represented a tightening of the *Roth* requirements in that the material had to be " 'unqualifiedly worthless' " before it could be labeled obscene (383 U.S., at p. 419, 86 S.Ct. 975), thus putting a burden on the prosecutor to prove the absence of any social value, a burden, said Chief Justice Burger in *Miller*, "virtually impossible to discharge under our criminal standards of proof" (413 U.S., at p. 22, 93 S.Ct., at p. 2613). Since no adherents to the "utterly without redeeming social value" element of the *Roth-Memoirs* test remain on that court, that element was simply abandoned in *Miller* and a new test was formulated, to wit: "The basic guidelines for the trier of fact must be: (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest * * * (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." [1] (413 U.S., at p. 24, 93 S.Ct., at p. 2615).

Comparing this new test to the old test we find element "(a)" substantially the same, i. e., the dominant theme must appeal to the

[1] Were the issue reached upon a trial, the question whether "the work, taken as a whole, lacks serious literary, artistic, political, or scientific value" must be ultimately determined by the triers of the fact only after the Trial Judge, in the absence of the jury and without disclosing to them his determination, has fully and independently resolved the issue as a preliminary matter of law against the accused.

prurient interest. The insertion of the average man into this element, and his application of contemporary community standards, does not represent any significant practical departure from the previous test, a point later discussed.

Element "(b)" for the new test presents no practical change whatsoever. That the offensive sexual material should be specifically defined by State statute in order to be prosecutable could well have been a point left unstated since adequate definition is essential to any criminal statute.

Element "(c)" of the new test does effect a change, of course. In place of the "utterly without redeeming social value" test, the court has substituted much looser criteria. Now, the prosecutor need not prove the material "unqualifiedly worthless". It will be sufficient to show that because of the predominant emphasis on the subject matter described in elements "(a)" and "(b)", the material, whether purportedly literary, artistic, political, or scientific, cannot be taken seriously as falling into any of those categories. To put an assessment of this test another way, the effectuation of a pretense as a serious work will not save the material from being found obscene if, in fact, it is dominated by patently offensive sexual material clearly geared for a market made up of those who would have no use for it other than to satisfy their lewd, lascivious or morbid desires and cravings.

Chief Justice Burger goes on in *Miller* to state that:

"If a state law that regulates obscene material is thus limited [in accord with the new test above recounted], as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional claims when necessary. * * *

"We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under the second part (b) of the standard announced in this opinion, *supra*:

"(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

"(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals." (413 U.S., at p. 25, 93 S.Ct., at p. 2615.)

In footnote 6 to his opinion (p. 24, 93 S.Ct. p. 2615) the Chief Justice points to the Oregon and Hawaii legislation as examples of adequately

detailed statutes, but then states: "We do not hold, as Mr. Justice Brennan intimates, that all States other than Oregon must now enact new obscenity statutes. Other existing state statutes, as construed heretofore or hereafter, may well be adequate."

The final highlight in the *Miller* opinion concerns the contemporary community standards yardstick incorporated into the "(a)" element of the revised obscenity test. The necessity for a national standard as to what is patently offensive was abjured in favor of the application of "community" standards. We take pains to here declare that in determining whether any material is patently offensive or obscene, the community standard to be applied is a "state" standard. The connotation of the term "community" appears to have brought about a great deal of hand wringing by concerned libertarians who have tended to interpret the term as meaning local or provincial so as to open the door to censorship by local authorities or even constables who would be free to form their own notions as to what constituted patently offensive material. A fair reading of Chief Justice Burger's opinion, however, does not lead to any such conclusion. In the *Miller* case both the prosecutor and the defense assumed that the "community standards" applicable to the factual determination of whether or not the subject material was patently offensive were those of the State of California. This State standard was specifically approved in the *Miller* opinion (413 U.S., at p. 32, 93 S.Ct. 2607)[1] and, when taken together with the statement quoted *supra*, that assuming the State law complies with the new test constitutional rights are adequately protected by the safeguards of appellate review (413 U.S., at p. 25, 93 S.Ct. 2607), it becomes clear that the obscenity statute in any given State will be applied with uniformity Statewide through the construction given it by the appellate courts. "Local" law enforcement officers would no more be justified in seizing material that could not reasonably be construed as being hard core than they are, or would be in arresting a man for assault when only harsh words were spoken. And, as in the spurious assault case, an unreasonable obscenity arrest would quickly be recognized as such by the prosecutor or Judge in the

[1] Chief Justice Burger made this clear when he stated (413 U.S., at pp. 32–34, 93 S.Ct., at p. 2619) that: "It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City. [Citations.] People in different States vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity. As the Court made clear in Mishkin v. New York, 383 U.S. 502, 508–509, 86 S.Ct. 958, 963, 16 L.Ed.2d 56 (1966), the primary concern with requiring a jury to apply the standard of 'the average person, applying contemporary community standards' is to be certain that, so far as material is not aimed at a deviant group, it will be judged by its impact on an average person, rather than a particularly susceptible or sensitive person—or indeed a totally insensitive one. [Citations.] We hold that the requirement that the jury evaluate the materials with reference to 'contemporary standards of the State of California' serves this protective purpose and is constitutionally adequate."

application of the State standard. Probable cause is still the touchstone of valid prosecution. Of course, in close cases where convictions ensue, the corrective apparatus in the appellate route is just as available as it is in any other type of case. Finally, and as a practical matter later to be discussed, patently offensive sexual material subject to seizure has become so elemental in content as to be readily discerned when seen by an observer with the statutory definition in mind, as construed by this court.

The opinion in *Miller* is concluded as follows: "In sum we (a) reaffirm the *Roth* holding that obscene material is not protected by the First Amendment, (b) hold that such material can be regulated by the States, subject to the specific safeguards enunciated above, without a showing that the material is '*utterly* without redeeming social value,' and (c) hold that obscenity is to be determined by applying 'contemporary community standards,' * * * not 'national standards.'" (413 U.S., at pp. 36–37, 93 S.Ct., at p. 2622; emphasis as in original).

The thrust of Chief Justice Burger's opinion in the *Paris Adult Theatre I* case was to dispel the notion that pornography limited in availability to consenting adults only, should benefit from the protection of the First Amendment. It was also held that the prosecutor need not produce "expert" evidence that the material is obscene when the material itself is placed in evidence since, quite obviously, it speaks for itself under the "average person", "community standard" requirements set forth in *Miller*.

II

What we obviously now have in the statute is a codification of the *Roth-Memoirs* criteria enacted in 1967.[3]

Prior to the June, 1973 decisions headed by *Miller* this statutory scheme, or, more particularly section 235.00, the definitions portion

[3] Section 235.00 of the Penal Law provides in pertinent part:
"The following definitions are applicable to sections 235.05, 235.10 and 235.15:
"1. 'Obscene.' Any material or performance is 'obscene' if (a) considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and (b) it goes substantially beyond customary limits of candor in describing or representing such matters, and (c) it is utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially suspectible audience.
"2. 'Material' means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.
"3. 'Performance' means any play, motion picture, dance or other exhibition performed before an audience.
"4. 'Promote' means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same."

with which we are primarily concerned, had consistently been held valid. A sampling of the cases includes Milky Way Prods. v. Leary, 305 F.Supp. 288 (S.D.N.Y., 1970) in which a three-Judge court, primarily concerned with whether there should be an adversary hearing before an arrest for obscenity, stated: "The attack upon § 235 as void for vagueness is frivolous. Roth v. United States sustained the bare word 'obscene' against a similar assault. See 354 U.S. at 491–492, 77 S.Ct. 1304. New York's detailed definition renders its statute more clearly impregnable" (305 F.Supp., at p. 295). The *Milky Way* decision was affirmed by the Supreme Court without opinion (397 U.S. 98, 90 S.Ct. 817, 25 L.Ed.2d 78).

In Overstock Book Co. v. Barry, 305 F.Supp. 842 (E.D.N.Y., 1969) the court discussed section 235.00 and specifically held that it was not void for vagueness and, "if anything, is somewhat more narrowly circumscribed than what the Constitution requires" (305 F.Supp., at p. 849). This case was affirmed, the Court of Appeals reiterating the holding that section 235.00 was clearly in line with *Roth* and therefore valid (436 F.2d 1289, 1293 [2d Cir., 1970]).

Finally, in Astro Cinema Corp. v. Mackell, 305 F.Supp. 863, 865 (E.D.N.Y., 1969), modified on procedural grounds 2 Cir., 422 F.2d 293, the court stated: "Here * * * the substantive statute is as assuredly valid as a statute can be when it must be drafted in the light of the First Amendment. [Citations.]"

Prior to June, 1973, then, no convincing argument had been made out against the validity of section 235.00 and one Federal decision after another had specifically declared the statute's constitutionality. If anything has occurred to change this state of affairs, it would have to be found in the decisions headed by *Miller*.

Since June, 1973, the Federal courts in New York have declined to entertain the question of the statute's validity pending our decision in *Heller* (e. g., United Artists Corp. v. Proskin, 363 F.Supp. 406 [N.D. N.Y., 1973]).[4]

Section 235.05 provides that:

"A person is guilty of obscenity when, knowing its content and character, he:

"1. Promotes, or possesses with intent to promote, any obscene material; or

"2. Produces, presents or directs an obscene performance or participates in a portion thereof which is obscene or which contributes to its obscenity.

"Obscenity is a class A misdemeanor."

[4] The Appellate Division, First Department, in Redlich v. Capri Cinema, 43 A.D.2d 27, 28, 349 N.Y.S.2d 697, 698, held that the provisions of CPLR 6330 were constitutional and well within the basic guidelines set forth in *Miller*. This statute authorizes the civil remedy of injunction to be used against "matter of an indecent character, which is obscene, lewd, lascivious, filthy, indecent or disgusting * * * or in any other respect [as] defined in section 235.00 of the penal law". While we do not pass on the validity of CPLR 6330, we note that the Appellate Division made pointed reference to the statutory incorporation of section 235.00 in the CPLR provision and they then observed, in dictum (p. 30, 349 N.Y.S.2d p. 701) that the Supreme Court

III

The California statute treated in *Miller* contains the *Roth-Memoirs* criteria and for all intents and purposes is the same as our own (see n. 1 in the *Miller* decision, 413 U.S., at p. 16, 93 S.Ct. 2607). Chief Justice Burger wrote: "The case we now review was tried on the theory that the California Penal Code § 311 approximately incorporates the three-stage *Memoirs* test, *supra*. But now the *Memoirs* test has been abandoned as unworkable by its author and no Member of the Court today supports the *Memoirs* formulation." (413 U.S., at p. 23, 93 S.Ct., at p. 2614).

It is obvious that this was not a holding, however, that the California statute was invalid. Had it been, our task in the instant case would have been *pro forma*. Rather, the case was sent back, as was the instant case, for evaluation in light of the whole *Miller* rationale. The Chief Justice made the obvious effort to point out that existing State statutes, presumably including California's, "as construed heretofore or hereafter" (413 U.S., at p. 24, n. 6, 93 S.Ct. 2607) could stand as valid. This effort is obvious because not once, but at least four times in the *Miller* opinion alone, reference was made to construction of the statute whatever form the statute might take.[5]

We now, then, pass to the next question—whether our statute can be construed so as to effectuate the *Miller* requirements which sets up the "average person" as the theoretical individual whose sensibilities need be offended. We look to the "ordinary adult". In either case the tests are concerned with the average man who has, of course, been a useful figure in our legal history, especially in the law of negligence, but also in the law of evidence where he is present, but unobtrusive. *Miller* holds that the average man must apply contemporary community standards and, as we have already declared, this means a State standard which is definable by the State's appellate courts. Our obscenity statutes have always been subject to such a uniformly administered standard. Our State courts have always been

had the Penal Law section before it in *Heller*, and "had an opportunity to declare it unconstitutional. But it did not do so."

In another case involving CPLR 6330 Mr. Justice Pittoni, at Special Term, Nassau County, in upholding the validity of a complaint, held that the presumption of constitutionality had not been overcome (Incorporated Vil. of Lynbrook v. United Artists Corp., 75 Misc.2d 124, 347 N.Y.S.2d 856).

[5] "That conduct must be specifically defined by the applicable state law, as written or authoritatively construed" (413 U.S., at p. 24, 93 S.Ct., at p. 2615). "If a state law that regulates obscene material is thus limited, as written or construed" (413 U.S., at p. 25, 93 S.Ct., at p. 2615). " 'Hard core' sexual conduct specifically defined by the regulating state law, as written or construed" (413 U.S., at p. 27, 93 S.Ct., at p. 2616). And, finally, the material from footnote 6 just above quoted in the text.

guided by our interpretation of the obscenity statutes, as with our interpretation of any criminal statute.

Next, we are of the opinion that subdivision 1 of section 235.00 sufficiently describes the conduct sought to be prohibited so as to satisfy the void-for-vagueness test. It takes no dictionary reference to understand what the words "nudity", "sex", "excretion", "sadism" or "masochism" mean. The last three terms, which are descriptive of certain kinds of conduct whether portrayed live, printed or photographically, can be considered *malum in se* in terms of *commercial exploitation.* It is ludicrous and preposterous to suppose that a person dealing in such material would not understand the prohibitions here. The terms "nudity" and "sex" are only *malum prohibitum,* of course, since each, to varying extents, could be commercially exploited for valid artistic, scientific, or literary ends. But surely, applying the sense of subdivision 1 of section 235.00 as a whole, there can be no doubt as to the narrow area sought to be prohibited. When sex and nudity, and the other sorts of prohibited conduct for that matter, are exploited substantially beyond customary limits of candor and would, as the average man views it, be the predominant element in the material so as to appeal, again predominantly, to lascivious cravings, then there can be no doubt as to what is prohibited. *What we are talking about is hard core pornography.* We have applied the hard core pornography test with consistency both under former section 1141 of the Penal Law and under the current statute (People v. Kirkpatrick, 32 N.Y.2d 17, 343 N.Y.S.2d 70, 295 N.E.2d 753; People v. Fritch, 13 N.Y.2d 119, 243 N.Y.S.2d 1, 192 N.E.2d 713; People v. Richmond County News, 9 N.Y.2d 578, 216 N.Y.S.2d 369, 175 N.E.2d 681, *supra*). This court and the lower courts have ever been careful strictly to define the sort of material or conduct prohibited (see, e. g., People v. Bookcase, Inc., 14 N.Y.2d 409, 252 N.Y.S.2d 433, 201 N.E.2d 14 [reversal of conviction for selling materials to minors]; People v. Wendling, 258 N.Y. 451, 180 N.E. 169 [portrayal of characters in a play as coarse and vulgar, who employ coarse and vulgar language, not obscene]; People v. Stabile, 58 Misc.2d 905, 296 N.Y.S.2d 815 [photographs of nudes, with no indication of sexual activity, did not amount to hard core pornography]). The fact of an occasional close case (see, e. g., People v. Carlos, 24 N.Y.2d 865, 301 N.Y.S.2d 96, 248 N.E.2d 924) serves as no basis for a declaration that the penal statute, under which it is decided, is invalid. Hard core pornography consists of "Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated [and/or] Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals" (413 U.S., at p. 25, 93 S.Ct., at p. 2615).

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Our task on this void-for-vagueness aspect is considerably eased since we only recently gave full consideration to a due process attack on subdivision 6 of section 240.35 of the Penal Law, the loitering statute (People v. Berck, 32 N.Y.2d 567, 347 N.Y.S.2d 33, 300 N.E.2d 411). A majority of us decided that the statute was invalid for the reasons (1) that "there are no commonly understood set of suspicious circumstances of which all citizens are aware and to which applicability of the statute is restricted" (32 N.Y.2d, at p. 570, 347 N.Y.S.2d, at p. 36, 300 N.E.2d, at p. 413), and (2) that it also "places virtually unfettered discretion in the hands of the police and thereby encourages arbitrary and discriminatory enforcement * * * Thus, whether or not a suspect is hauled off to jail for suspicious loitering depends, for all intents and purposes, upon the whim of the policeman" (32 N.Y.2d, at p. 571, 347 N.Y.S.2d, at p. 37, 300 N.E.2d, at p. 414). Neither of those objections can successfully be directed against section 235.00, which is easily interpreted as pertaining to hard core pornography and the average man, whether he be the smut peddler or the policeman, knows it when he sees it (Jacobellis v. Ohio, 378 U.S. 184, 197, 84 S.Ct. 1676, 12 L.Ed.2d 793). And, as interpreted, that statute has been given and will be given only that narrow application. One surely can describe forbidden conduct by words which admit of varying constructions depending on context, and then afix definite meanings to those words by construing them only in the light of the conduct sought to be prohibited. In other words, while the terms "sex" and "nudity" are not inherently pornographic and would not necessarily be pornographically dealt with, even if exploited commercially, the exploitation would be considered pornographic if its predominant appeal went to the prurient interest and it exceeded the customary limits of descriptive candor. This includes, and has been limited to, offensive depictions of ultimate sexual acts, masturbation, excretory functions, lewd genital exhibition, i. e., exactly that sort of thing described in the *Miller* opinion (413 U.S., at p. 25, 93 S.Ct. 2607).

There is, therefore, no merit to the argument that the person dealing in such materials cannot know what is prohibited, or that what appeals to the prurient interest can be just anything the policeman says it is; this latter aspect being especially clear in light of the State contemporary standard which we have announced.

There is no need, then, for a protracted discussion on the void-for-vagueness doctrine. In addition to the treatment of this doctrine in *Berck* (32 N.Y.2d 567, 347 N.Y.S.2d 33, 300 N.E.2d 411, *supra*) see also the pronouncements by the Supreme Court on the same point in Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110; Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584; United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538, 91

L.Ed. 1877; and Chief Justice Burger's adoption in *Miller* of this language from the case of Roth v. United States (354 U.S., at pp. 491–492, 77 S.Ct. 1304, *supra*): "'Many decisions have recognized that these terms of obscenity statutes are not precise. * * * This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process. ". . . [T]he Constitution does not require impossible standards"; all that is required is that the language "conveys sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices . . ." [citation] * * * "* * * That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense"'". (413 U.S., at pp. 27–28, n. 10.)[6]

And, of course, we recall the pronouncement of the three-Judge Federal court in Milky Way Prods. v. Leary (305 F.Supp. 288, 295 [S.D.N.Y., 1970], affd. 397 U.S. 98, 90 S.Ct. 817, *supra*) that "New York's detailed definition renders its statute more clearly impregnable [than the less detailed standard dealt with in *Roth*]."

The third aspect of the *Miller* test does not detain us long. The rejection of the "utterly without redeeming social value" test in favor of a broader test based on lack of serious literary, artistic, political or scientific value, can hardly inure to the benefit of those dealing in the subject materials in terms either of due process denial or First Amendment infringement. In other words, since our statute remains more narrowly defined than those limits now set forth in *Miller*, defendants cannot be heard to complain. This third element is merely another way of emphasizing the point that the material must be wholly designed for a prurient interest market. In assessing this third element we are mindful that the material must be hard core pornography as stated in elements "(a)" and "(b)" and as construed by this court, which construction coincides with the examples given in *Miller*. For this reason alone any argument that the decision in *Miller* to drop the "utterly without" test wrecks section 235.00, is without any merit whatsoever. Not only is there no holding in *Miller* that a State may not utilize stricter standards than those allowed, but the presence of the "utterly without" element causes no alteration of the

[6] In Ginsberg v. New York, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195, rehearing den. 391 U.S. 971, 88 S.Ct. 2029, 20 L.Ed.2d 887, Justice Brennan wrote: "The attack on subsection (f) is that the definition of obscenity 'harmful to minors' is so vague that an honest distributor of publications cannot know when he might be held to have violated § 484–h. But the New York Court of Appeals construed this definition to be 'virtually identical to the Supreme Court's most recent statement of the elements of obscenity.' [citations]. The definition therefore gives 'men in acting adequate notice of what is prohibited' and does not offend the requirements of due process. [Citations.]" (390 U.S., at p. 643, 88 S.Ct., at p. 1282).

rest of the statute so that, taken as a whole, it cannot be said to conform, as construed, to the *Miller* requirements insofar as those requirements set the limits of First Amendment protection.

Two out-of-State decisions to which our attention has been drawn incorporate a different view regarding the abandonment of the "utterly without" test. Thus, it is stated in United States v. Lang (Dist. Ct., Central Dist. Calif., July 18, 1973): "The new test simply requires that the prosecution show, *inter alia*, that 'the work, taken as a whole, lacks *serious* literary, artistic, political, or scientific value.' [Citation.] In short, the Court's new test substantially changes the law of obscenity, and as a general proposition now makes it easier to convict the defendants. Therefore, to prosecute defendants under the judicially devised *Miller* definition of obscenity and to instruct the jury on it would, without fig leaves, be the functional equivalent of an *ex post facto* application of the law. This the due process clause forbids. Bouie v. City of Columbia, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964)." (See, also, State v. Wedelstedt, Dist. Ct., Linn County, Iowa, 213 N.W.2d 652, 1973.)

Since, however, we do not construe section 235.00 to the permissible limits now allowed in *Miller* there can be no ex post facto application of the looser *Miller* criterion. The scope of the statute is no broader than it was before June, 1973, and remains a bit narrower than the allowable limits insofar as the third element is concerned, after June, 1973. Our statute, in effect, *more than complies* with the *Miller* limits as written and construed. It is well to here point out that it is within the province of the Legislature to determine whether the less stringent test of obscenity laid down in that case should now become the ultimate formula to be applied in New York.

It is true that a few State obscenity statutes have been held invalid in light of *Miller*. For example, in one California case the statute, which is much like ours, was voided (People v. Bloom, Superior Court, Los Angeles County, July 6, 1973) while in a later California case the statute was construed to meet the *Miller* criteria (People v. Euskat, Court of Appeals, Second Dist., Aug. 8, 1973). Other cases decided since *Miller*, brought to our attention by counsel, hold the various local statutes invalid. We might agree that expediency dictates a short memorandum to the effect that any attempt to preserve section 235.00 would constitute judicial legislation. This was apparently thought the better course in some of the post-*Miller* decisions since State Legislatures, perhaps including our own, will be quick to draft new statutes incorporating the *Miller* tests. However, we do have these two cases before us and possibly more in process under the current statute. We are not convinced it would be intellectually honest to follow the path of expediency when there is the venerable presumption of validity

(People v. Scott, 26 N.Y.2d 286, 291, 309 N.Y.S.2d 919, 924, 258 N.E.2d 206, 210; People v. Kaiser, 21 N.Y.2d 86, 103, 286 N.Y.S.2d 801, 815, 233 N.E.2d 818, 828; People v. Epton, 19 N.Y.2d 496, 505, 281 N.Y.S.2d 9, 15, 227 N.E.2d 829, 834; Wiggins v. Town of Somers, 4 N.Y.2d 215, 218, 173 N.Y.S.2d 579, 581, 149 N.E.2d 869, 870) and when the statute can be construed to comport with the *Miller* rationale.

In sum, our obscenity statute is sufficiently specific and well within the ambit of the lines laid down in *Miller*. Very simply put, it prohibits commercial exploitation of hard core pornography, a term, employing a State standard we have employed and continue to employ, which does not go beyond those examples set forth in *Miller* and which, in fact, contemplates material of no redeeming value whatsoever.

IV

Nothing seems to have altered the content of "Blue Movie" since a year ago when it was found obscene by a majority of this court (29 N.Y.2d 319, 327 N.Y.S.2d 628, 277 N.E.2d 651). The short of it is that if "Blue Movie" was obscene before June, 1973 under section 235.00, then, under the rationale we have outlined, it can be no less so now. Despite all the rhetoric, the practical tests for obscenity insofar as this court has always applied them, have undergone no change in light of the *Miller* decision. Unless the Legislature amends the statute, as it is free to do, our tests will continue to be what they have been. The question in each case is—is this hard core pornography in the sense it emphasizes to a predominant extent sex acts of whatever sort between or among people, or lewd exhibition of genitalia? The question may be difficult to answer in instances where the material contains an abundance of pornography, but can also be considered as making a *valid* statement of some sort. If such content is really present then the work would not be utterly lacking in value, or, as under the *Miller* test, if such content is *seriously* present then, taken as a whole, it could not be banned.

The "utterly lacking" test was abandoned in *Miller* because of the difficulty in proving such an extreme. The clever pornographer need only infuse some social or political content into the work to escape successful prosecution. However, this court, as it must have when the *Heller* case was here before, has applied the "utterly without" test within the realm of reason. Thus, we found "Blue Movie" obscene even though the pornographic activities depicted were interspersed with some political and social dialogue. We cut through the form, as it were, to the substance and the substance of the film was and remains hard core pornography. The pretense at redeeming value has

been discounted when it clearly is injected as a safeguard to protect a work the focus of which is toward the prurient interest market.

There is no community standard problem in *Heller*. The movie was specifically found to be hard core pornography and Presiding Judge Ringel stated: "Hard core pornography is obscene by any standard". Our affirmance of the *Heller* conviction should be reinstated.

The magazine *Screw* is also clearly obscene by any standard. The issues in evidence are crammed with photographs of naked men and women engaging in homosexual and heterosexual acts, in many instances with genitals prominently and lewedly displayed. Drawings and cartoons, are also explicit, exaggerating sexual activity to preposterous degrees. Book and movie reviews are confined only to those works which deal with sex, the worth of a movie being measured by the degree of male erection it is likely to induce. The advertising is no less egregious. The issues contain display ads for what used to be called stag films; sex paraphernalia such as dildoes are prominently illustrated in detail; and personal ads soliciting male and female participation in sex acts of every conceivable sort are written quite unambiguously. Many of the articles are totally sex oriented and are written in the most graphic terms. The use of all the most abominable dirty words is prevalent both in headlines and text. Indeed, it is hard to conceive of how a publication could reach any further lows in attempts to appeal to prurient interest.

The *Per Curiam* opinion of the Criminal Court Judges was primarily concerned with the "utterly without" test (65 Misc.2d 917, 320 N.Y. S.2d 91). The court noted that these issues do contain a "sprinkling" of nonobscene articles, but concluded that, taken as a whole, the magazine remained without value. The crucial factor, in addition to the depictions, and articles conceded by the defendant Goldstein as an affrontery to existing community standards, is the inclusion of the advertisements just noted. The net effect was capsulized as follows:

"Such advertising, together with that soliciting the purchase of the aforesaid sex articles and devices certainly go substantially beyond 'the present critical point in the compromise between candor and shame at which the community may have arrived here and now' [citation], and degenerates to illegality the entire publication, coloring also with the brush of obscenity even that sprinkling of articles which contain some social value.

* * * * * * * * * *

"The fact that some of the articles in *Screw* are not obscene and may be legally innocuous does not necessarily mean that the publication has social value or importance. As Judge Friendly reminds us,

truly pornographic material can not be rescued by the inclusion of a few verses of the Psalms. (United States v. A Motion Picture Film [I Am Curious-Yellow], 2 Cir., 404 F.2d 196, 201.)" (65 Misc.2d, at pp. 921, 922, 320 N.Y.S.2d, at p. 98.)

This, of course, is the point made previously in respect to "Blue Movie". The attempt to inject elements of ordinary material will be considered a pretense when the material is otherwise predominantly hard core pornography, patently designed for the prurient interest market.

The courts below employed standards entirely in accord with applicable State standards, i. e., the question was simply whether this material is predominantly hard core. It assuredly is and can hardly be treated differently from that material considered obscene by this court in People v. Kirkpatrick (32 N.Y.2d 17, 343 N.Y.S.2d 70, 295 N.E.2d 753, *supra*).

In each case, the order of the Appellate Term should be affirmed.

JONES, Judge (dissenting).

I dissent and would hold section 235.00 of our Penal Law unconstitutional under the new obscenity test laid down by the Supreme Court in Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419.

That court has now held that the First Amendment does not preclude State regulation of visual and written materials where the trier of fact, on the basis of the application by the average person of contemporary community standards, finds that the work in question, taken as a whole, appeals to the prurient interest and lacks serious literary, artistic, political or scientific value, and additionally depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable State law.

I have no difficulty in concluding that our statute comports with the first two of these three criteria. I cannot agree, however, that as drafted or as interpreted by our court section 235.00 meets the Supreme Court's additional mandate of specific definition of the proscribed sexual conduct.

The Supreme Court has declared that the required specificity of conduct may be found either in the explicit language of the statute as written or in authoritative construction of the statute. By authoritative construction I assume is intended, in our case, actual interpretation by decisions in our court, and possibly by interpretations of the lower courts of our State left undisturbed on application for review by us. I am not unmindful, either, of the implied warmth of the Supreme Court's invitation to us so to construe our statute as to meet

its mandate (Miller v. California, 413 U.S., at p. 25, 93 S.Ct. 2607; Heller v. New York, 413 U.S. 483, 494, 93 S.Ct. 2789, 37 L.Ed.2d 745).

All acknowledge, I take it, that section 235.00 as presently drafted, without more, does not on its face meet the Supreme Court test for specificity of sexual conduct. The issue turns rather on whether the statute has been or now can reasonably be so construed as to supply the requisite particularity.

Initially I must assume that the call for specificity now laid down by the Supreme Court with reference to obscenity is distinct from and quite beyond that predictability generally required to hurdle the more familiar void-for-vagueness obstacle to constitutionality. The treatment of the subject in the Supreme Court, the care and length of its articulation in the *Miller* opinion, lends no support to a conclusion that this is indeed nothing more than a fresh restatement of a time-honored rubric and that it could as well have been left unstated. I cannot, therefore, agree with the majority, that "Element '(b)' of the new test presents no practical change whatsoever".

Thus understood, in my view our statute has not been nor can it now be so construed as to meet this extra demand now imposed by the Supreme Court.*

The court in *Miller* held that: "Under the holdings announced today, no one will be subject to prosecution for the sale or exposure of obscene materials unless these materials depict or describe patently offensive 'hard core' sexual conduct *specifically defined* by the regulating state law, as written or construed. We are satisfied that these *specific prerequisites* will provide fair notice to a dealer in such materials that his public and commercial activities may bring prosecution." (413 U.S., at p. 27, 93 S.Ct., at p. 2616; emphasis supplied.) The requirement of specificity expressed in the quoted language—that State statutes proscribing obscenity must specifically define the conduct to be regulated so as to give fair notice to purveyors of erotic material that their activities may invite prosecution—could not have been stated in clearer, more unambiguous terms.

If there otherwise were doubt, the court also gave nonlimiting but illustrative examples of acceptable definitions:

"(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

"(b) Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals." (413 U.S., at p. 25, 93 S.Ct., at p. 2615.)

* I note that four Justices in the Supreme Court without more would have held our statute unconstitutional.

This example, too, draws attention both to the delineation of the acts and to the manner of their representation.

The majority of our court, in concluding today that we have so construed our statute as to provide the required overlay of specificity, relies principally on the concept of hard core pornography and states categorically that "[w]e have applied the hard core pornography test with consistency both under former section 1141 of the Penal Law and under the current statute". I have two difficulties with reliance on this assertion, each in my view fatal to the conclusion reached by the majority.

In the first place, examination of the cases in our court refutes the statement. I find no reference, for instance, to any "hard-core pornography" test in the opinion in People v. Kirkpatrick, 32 N.Y.2d 17, 343 N.Y.S.2d 70, 295 N.E.2d 753. In the opinion of our court in *Heller,* itself, (29 N.Y.2d 319, 327 N.Y.S.2d 628, 277 N.E.2d 651) we held there was a violation of the statute, but again entirely without reference to any "hard-core" test; in fact the result was based rather on the conclusion of the majority there that the film, "Blue Movie", was "simple pornography unrelieved by any merit" (p. 321, 327 N.Y.S.2d p. 629, 277 N.E.2d p. 650). Again in People v. Fritch, 13 N.Y.2d 119, 243 N.Y.S.2d 1, 192 N.E.2d 713 while "hard-core pornography" was used as one of "three of the established legal standards" (p. 123, 243 N.Y.S.2d p. 5, 192 N.E.2d p. 716) on which statutory violation was based, the holding of the court was subsequently overruled (see Larkin v. Putnam's Sons, 14 N.Y.2d 399, 404, 252 N.Y.S.2d 71, 75, 200 N.E.2d 760, 763). My review of the cases suggests that, rather than being followed consistently, after its announcement in People v. Richmond County News, 9 N.Y.2d 578, 216 N.Y.S.2d 369, 175 N.E.2d 681, the hard core pornography test was used once as an alternative ground and with mixed results, in *Fritch,* and that it has since been entirely ignored in our court.

In the second place, even if the hard core pornography test announced in *Richmond County News (supra)* had been regularly followed, that test did not include a specific description of the sexual conduct or acts which would meet the new Supreme Court requirement. The hard core test itself, as the language of the opinion in *Richmond County News* demonstrates, focused on characterization of the acts rather than on their definition or description. Thus—"the test of the obscene, of the pornographic, is not in the tendency or appeal of the material, but rather in its content objectively appraised. * * * It focuses predominantly upon what is sexually morbid, grossly perverse and bizarre * * *. Recognizable 'by the insult it offers, invariably, to sex, and to the human spirit' * * * it is to be differentiated from the bawdy and the ribald. Depicting dirt for

dirt's sake, the obscene is the vile, rather than the coarse, the blow to sense, not merely to sensibility. It smacks, at times, of fantasy and unreality, of sexual perversion and sickness" (9 N.Y.2d, at p. 587, 216 N.Y.S.2d at p. 376, 175 N.E.2d, at p. 686). The conclusion in *Richmond County News* was that the magazine then under scrutiny "contains nothing which smacks of sick and blatantly perverse sexuality." (*Id.*)

Evidently this test has no concern for the specific definition of sexual acts or conduct. Rather its focus is on the characterization, the quality of the acts performed. As Judge Scileppi wrote in the only other application of the hard core pornography test, in *Fritch*, the material "must be viewed in juxtaposition to time, place and circumstance" (13 N.Y.2d, at p. 123, 243 N.Y.S.2d, at p. 5, 192 N.E.2d, at p. 716).

In this sense the hard core pornography test is parallel to the requirement of the Supreme Court that, quite aside from the necessity for specific definition of the conduct, proscription may attach only if the act is depicted or described "in a patently offensive way". I note that the dual aspect of the requirement is unmistakably set forth in the Supreme Court's opinion in *Miller*: "unless these materials depict or describe *patently offensive 'hard core'* sexual conduct *specifically defined* by the regulating state law, as written or construed" (413 U.S., at p. 27, 93 S.Ct., at p. 2616; emphasis added). There are thus two facets to this branch of the test—(a) hard core and (b) specific definition. It must be evident that hard core (or depiction "in a patently offensive way", in the diction of the Supreme Court [p. 24, 93 S.Ct. 2607]) is a characterization which may or may not be applied to many sexual acts. The conclusion that the representation of the act is hard core depends, not on the act itself, but on the setting and the way in which the act is done, the overtones, the nuances, the message conveyed.

In my view, then, our court can only accurately be said to have gently laid the hard core pornography test aside. Even if there be no agreement with my reading of the cases in this respect, however, I nonetheless reach the conclusion that that test itself could only be equated to the requirement that the display be "patently offensive". I do not find in the hard core test, or otherwise in the opinion of the majority in this case, that there had been any substitute by judicial construction of section 235.00 for the catalogue of sexual acts found acceptable by the Supreme Court in the statutes of Oregon and Hawaii. Nor do I find any equivalent of that court's more general illustrative list of defined sexual conduct—"ultimate sexual acts", "masturbation, excretory functions and lewd exhibition of the genitals".

Accordingly, I would hold section 235.00, both as written and as construed by our court, insufficient to meet the new and distinct specific-definition-of-conduct test laid down by the Supreme Court. Thus, in my view, it is unconstitutional. That being so, the convictions in both the cases now before us should be reversed and the complaints dismissed.

WACHTLER, Judge (dissenting).

Under its decision in Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 the United States Supreme Court gives this court two choices. We can declare our existing obscenity statute unconstitutional, reverse the judgments of conviction now before us, and await corrective action by the Legislature—or we can accept the Supreme Court's invitation to authoritatively construe the standards of *Miller* into our present statute.

With the law concerning obscenity already a hodgepodge, the course of prudence dictates that we declare the existing statute constitutionally inadequate and leave the legislative function to the Legislature. Our alternative is to fashion the Emperor's new clothes, only to await the inevitable day we are asked to judge if the wardrobe fits. Since, in the end, the only real test of obscenity is the subjective perception of a majority of this court, the prospect of passing upon a home-made statute hardly seems becoming or appropriate.

In the obscenity field it is particularly important to have a statute which defines proscribed conduct with exacting precision. In order to perceive clearly the need for this statutory specificity, it is first necessary to examine the vagueness problem that is endemic with all obscenity prosecutions.

A robber, from a reading of our statutes, knows when he has committed a robbery. From the statutes he knows that if he intends to forcibly steal property from a person without that person's consent he has violated the law. He has perfect notice as to what the elements of the crime are (see, generally, Penal Law, §§ 160.00–160.-15). On the other hand, someone selling a book containing very explicit sex scenes has no such notice. He cannot know what is patently offensive or what offends the community by merely reading the statute. I do not think any court in the land would allow a statute to stand which states that it shall be illegal forcibly to steal property from a person in a manner which is patently offensive and is considered particularly deviant by community standards. The "robber" would have no way of knowing which robberies were circumscribed and which were allowed. Yet that is precisely what we have done with our obscenity law. I know of no way of ascertaining the

community standard before a decision is rendered. Is a man to be convicted of displaying obscene material even though he successfully gauged the standards of New York City where the material was displayed because our court ultimately decided that the more stringent standards of Elmira were more reflective of State-wide standards?

It is now well settled that obscene material does not fall within the protection of the First Amendment of the United States Constitution (Roth v. United States, 354 U.S. 476, 486, 77 S.Ct. 1304, 1 L.Ed.2d 1498; *Miller*, 413 U.S. at p. 23, 93 S.Ct. 2607). Still, the effect of any vague or overbroad obscenity prohibition *ipso facto* encroaches on the First Amendment. Certainly, when the potential harm to society is great and the need for action compelling, we must at times allow the courts and Legislatures to run the risk of infringing or at least chilling the right to free speech. But I can see little justification for doing so where the activity being proscribed has only a speculatively harmful effect on society,[1] and even that ineffable harm can be adequately circumscribed by the process of civil injunction.[2] If there is to be a criminal statute without a provision for civil injunction, there is absolutely no justification for not making the statute as specific as possible.

[1] The Supreme Court has asserted that obscenity is harmful to the "quality of life" and the "total community environment" (Paris Adult Theatre I v. Slaton, 413 U.S. 49, 58, 93 S.Ct. 2628, 37 L.Ed.2d 446). These conclusions like the alleged link between obscenity and antisocial behavior (*Paris*, at p. 61, 93 S.Ct. 2628) are what the Supreme Court refers to as "unprovable assumptions" that have been acted upon by civilized societies since the beginning of time (*Paris*, at p. 60, n. 11, 93 S.Ct. 2628). In other words, it is just common sense that obscenity is harmful to society (see Redlich v. Capri Cinema, 43 A.D.2d 27, 349 N.Y.S.2d 697). It is common sense to me that the majority of people within any given State, myself included, would find almost all of the material coming before this court in connection with obscenity prosecutions to be offensive and lacking in any value. But it is not a matter of common sense to me that the majority who finds such material offensive will be harmed in any material way if it allows the minority which finds such material to have some value to partake of it. Indeed, allowing the minority of competent adults to read and view material found offensive to the majority would appear to me to be the hallmark of a truly free society. Moreover, it is not a matter of common sense to me that a man should have to risk being put in jail for violating an undiscernible standard in order to gain some speculative protections for society as a whole.

[2] It is almost impossible to distinguish between protected and unprotected speech in the obscenity field (see Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73, 93 S.Ct. 2628, 37 L.Ed.2d 446 [Brennan, J., dissenting]). That does not necessarily mean that a State cannot outlaw obscenity. However, a criminal prosecution should be commenced only after a person has violated a civil injunction prohibiting the display of the material in question (see *Miller*, 413 U.S., at p. 37, 93 S.Ct. 2607 [Douglas J., dissenting]). The civil injunction would rid the community of the vexatious material as well as provide the possessor of the material with definite notice that his activity is in violation of a criminal statute.

It should be noted that, although the majority of the Supreme Court did not think the civil injunction process to be constitutionally mandated, they appeared to agree strongly that the civil injunction process was the most certain method of combatting obscenity while at the same time making sure that an individual's constitutional rights remain inviolate (*Paris*, 413 U.S. at p. 55, n. 4, 93 S.Ct. 2628).

A specifically defined obscenity statute will at least give a defendant notice that he is nearing the borders of permissible conduct. Such minimal notice is essential since the "community standards" and "patently offensive"[3] elements of the crime are so vague. Our statute, as authoritatively construed by our court clearly lacks the specificity necessary to give a defendant any adequate notice of proscribed conduct.

I am in total agreement with the legal axiom that whenever possible a court should construe a legislative enactment in a way that would make it comply with the Constitution. But what we would have to do in this case goes far beyond construction. In order to make our statute constitutional, we would be doing more than construing it, we would be rewriting it. If a court were permitted to provide detailed provisions of a statute, then there would never be a need to declare any statute unconstitutional for being too vague or overbroad. The judicial officer could merely assume a legislative role and rewrite the defective law. Although we often go quite far to construe a statute in order to make it comply with the Constitution, the line should be drawn when judicial construction becomes transmogrified into legislative creation.[4]

Accepting the Supreme Court's invitation to rewrite our State obscenity statute is particularly unwise and unjust since the rewriting will be done piecemeal. Obscenity cases lend themselves only to a case by case application (see Mishkin v. New York, 383 U.S. 502, 516, 86 S.Ct. 958, 16 L.Ed.2d 56 [Black, J., dissenting]). It appears our court will add a new provision to the State obscenity law as each case arises depicting a heretofore unlitigated (in this court) sexual display. Every individual unfortunate enough to be prosecuted under an as of yet unwritten (i. e., an act not previously "construed" by this court) portion of the State obscenity statute will be adjudged a criminal even though "he could not reasonably understand" the activity "to be proscribed" (United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 98 L.Ed. 989 [Warren, Ch. J.]).

The constitutional mandate of giving every individual notice of what conduct is criminally prohibited (see Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888) will be violated every time an

[3] A mere violation of the specifically worded provision of a statute (e. g., showing the genital area) is not a per se violation of part (b) of the *Miller* formula (413 U.S., at p. 25, 93 S.Ct. 2607). The transgression of the statutory provisions must be "patently offensive".

[4] Another reason why I think we should leave the rewriting of an obscenity statute to the Legislature is to allow it to define what community is encompassed by the term "community standards" in part (b) of the *Miller* formulation (413 U.S., at p. 25, 93 S.Ct. 2607). The majority of our court today has defined community in terms of the entire State. I think that question should be decided by the Legislature after hearings have been held on the matter.

individual is arrested before we "authoritatively construe" that portion of the statute which applies to him. Such action smacks of judicial ex post facto legislation.[5] (See United States v. Hanson, 9th Cir., No. 73–2603; United States v. Long, C. D. Calif., No. 10712–HP–CD.)

It is clear from a reading of today's decision that the obscenity field will remain a bothersome and burdensome one for the courts. It is bothersome enough that the courts, of necessity, must enter this morass as part of its judicial function. I think this court has compounded that burden and complexity by deciding today to also enter the field in a legislative capacity. Accordingly I dissent from the majority decision insofar as it holds our State criminal obscenity statute to be constitutional.

BURKE, BREITEL, and JASEN, JJ., concur with GABRIELLI, J.

JONES, J., dissents and votes to reverse in an opinion in which FULD, C. J., and WACHTLER, J., concur.

WACHTLER, J., dissents in a separate opinion.

In People v. Heller: Upon reargument: Order affirmed.

In People v. Buckley and Goldstein: Order affirmed.

Dated: December 28, 1973

[5]The majority protests that it is not laying down such a law because the defendants were convicted under a standard carrying a heavier burden of proof for the prosecutor than the one recently announciated by the Supreme Court in *Miller*. It is true that part (c) of the *Miller* test is not as demanding on the prosecutor as the "utterly without redeeming social value" test of Memoirs v. Massachusetts, 383 U.S. 413, 418, 86 S.Ct. 975, 16 L.Ed.2d 1. However part (b) of the *Miller* standard, mandating specificity of definition in State statutes, is more demanding of the prosecutor than was the case under *Memoirs*. And even assuming *arguendo* that specificity has now been added to our statute by the majority decision in this case, it has come after the fact of the defendants' convictions. Moreover, in all future cases as this court adds specificity to the vague State statute, the creation of a valid law (i. e., by making it specific enough to be constitutional) will unarguably come after the defendant in question has been convicted.

Actually, our present statute still contains the "utterly without redeeming social value" test (Penal Law, § 235.00, subd. 1, par. [c]). The majority today asserts that under that test "The clever pornographer need only infuse some social or political content into the work to escape successful prosecution". Yet, the majority then implicitly concedes that this court has, in effect, neglected the "utterly without" test in favor of the "serious value taken as a whole" *Miller* test for some time before *Miller*, came down. Such action may have shown great prescience as well as pragmatism on the part of this court, but until the Legislature changes its *Memoirs* test to a *Miller* test, a disregard of the "utterly without" criteria amounts to judicial nullification of a duly passed and unarguably constitutional legislative act. This is then but another reason why the Legislature and not this court should refashion the criminal obscenity statute.

APPENDIX B

Court of Appeals Remittitur

B-1

Court of Appeals Remittitur

No. 297

Form 3

Criminal Court of the City of New York
County of NEW YORK Date MAR 28 1974

I hereby certify that the within is a true
Copy of the Record on file at this Court.
MILTON SCHWARTZ
COURT CLERK

Court Clerk

Court of Appeals

State of New York, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 28th day of December in the year of our Lord one thousand nine hundred and seventy-three, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, *Presiding.*

[redacted]
James M. Flavin, Clerk.

REMITTITUR.....December 28,..... 19 73....

B-2

Court of Appeals Remittitur

App.T. No. 297 73
The People &c.,
Respondent,
vs.
Jim Buckley and Al Goldstein,
Appellants.

Be it Remembered, That on the 21st day of May in the year of our Lord one thousand nine hundred and seventy-three, Jim Buckley and Al Goldstein,

the appellants in this cause, came here unto the Court of Appeals, by Herald Price Fahringer, their attorney -, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate ~~Term~~ Division of the Supreme Court in and for the First Judicial Department. And The People &c.,

the respondent~~x~~ in said cause, afterwards appeared in said Court of Appeals by Frank S. Hogan, D. A., New York County, ~~xxxxxxxxxxxx~~ attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

B-3

Court of Appeals Remittitur

Whereupon, The said Court of Appeals having heard this cause argued by

Mr. Herald Price Fahringer,

of counsel for the appellants , and by

Mr. Lewis R. Friedman,

of counsel for the respondent - ,

and after due deliberation had thereon, did order and adjudge that the order

~~of the Appellate Division of the Supreme Court appealed from~~ herein be and the same hereby is affirmed.

Criminal Court of the City of New York
County of NEW YORK Date MAR - 8 1974
I hereby certify that the within is a true
Copy of the Record on file at this Court
MILTON SCHWARTZ
COURT CLERK

Court Clerk

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the ~~County~~ Criminal Court of the City of New York, there to be proceeded upon according to law.

B-4

Court of Appeals Remittitur

Therefore, it is considered that the said order be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Criminal Court of the City of New York,

before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Criminal Court, before the Judges thereof, &c.

James M. Mavin

Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,
Albany, December 28, 1973 .

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

James M. Mavin

Clerk.

APPENDIX C

Appellate Term Order of Affirmance

C-1

Appellate Term Order of Affirmance

Appeal by defendants from judgments of the Criminal Court of the City of New York, rendered March 30, 1971, 65 Misc.2d 917, 320 N.Y.S.2d 91, convicting them, after trial, of obscenity in the second degree (P.L. § 235.05) and sentencing them to pay fines totaling $1,500 each. The fines were paid.

Herald Price Fahringer, Jr., Buffalo (Lipsitz, Green, Fahringer, Roll, Schuller & James, Buffalo, of counsel), for defendants-appellants.

Frank S. Hogan, Dist. Atty. (Michael R. Juviler and Anthony J. Girese, New York City, of counsel), for plaintiff-respondent.

Before GOLD, J. P., QUINN and LUPIANO, JJ.

PER CURIAM.

Judgments of conviction affirmed.

Dated: December 7, 1972

APPENDIX D

Criminal Court Opinion

Criminal Court Opinion

PER CURIAM:

The defendants Buckley and Goldstein, as publishers and editors, and the defendant Balan, as printer, are charged with violating § 235.05, Penal Law, in that they did engage and did aid and abet the publishing, composition, distribution and dissemination of obscene material, to wit, Volumes 14, 15, 17, 22, 23 and 24 of a tabloid-type magazine entitled "Screw". These volumes are designated as People's Exhibits Nos. 2, 3, 4, 5, 6 and 7 respectively. The charge against Balan covers only People's Exhibits #2 and #3 (Vols. 14 and 15).

It was conceded that this magazine, consisting of 28 pages each, was openly displayed for sale on numerous newsstands throughout this City. The format of the publication reveals the name "Screw" in large colored letters on a background of different colors covering the top of the cover page. Underneath appears the legend "The Sex Review", and at the bottom, the additional legend, "Warning. Adult Type Sex Material, etc." The masthead of these publications lists such titles as "Smut Peddlers" and "Schlock Meisters" while a female member of the publication's staff is denominated as the "Pussy Power Potentate".

The publication contains lurid drawings, phallic oriented cartoons and pictures of nudes of both sexes. Some depict heterosexual and homosexual acts. Commercial advertisements pertaining to sexual material such as dildoes, and personal advertisements soliciting partners for all types of sexual activities are published in each issue. A variety of articles and editorials are included, ranging from book reviews to instructions on how to perform acts of anal sodomy to gain maximum gratification.

As stated on the front cover, these magazines purport to be sex reviews, and sex is the dominant theme. Only books and motion picture films dealing with sex are reviewed. The book review section bears the heading "Fuckbooks". The motion picture films are rated by a "Peter Meter", a drawing of a penis superimposed upon a scale, which rates the film, being reviewed, according to the percentage of erection induced by viewing the motion picture. Four letter words—"dirty" words—are sprinkled generously throughout.

The publisher's avowed purpose, in disseminating this magazine, is to shatter the fetters, which, they assert, inhibit individuals from fully enjoying sex in all its varied and manifold forms. They claim that most persons are hypocrites when discussing sex and when indulging in sexual activity. This treatment of sexual matters—airing it—so it is claimed, is for the public good.

The Court is persuaded that no element of pandering is involved in the sale and distribution of these magazines, such as was condemned in Ginzburg v. United States, 383 U.S. 463, 86 S.Ct. 942, 16 L.Ed.2d 31 [1966]. These magazines, whose cover boldly proclaims its appeal to sex, are openly displayed for sale, and may be freely purchased. This, in and of itself, does not constitute "pandering" within the purview of *Ginzburg*. See Redrup v. New York, 386 U.S. 767, 87 S.Ct. 1414, 18 L.Ed.2d 515 (1967).

D-2

Criminal Court Opinion

Nor is there any claim of deliberate sales to minors (Redrup v. New York, supra). That some of these issues may ultimately be found in the possession of juveniles, is not proof that the sales pitch is directed at the juvenile market. In fact, the legend on the covers attempts to prohibit sales to minors.

Additionally, there is no evidence that these magazines have been foisted upon an unwilling public, or an unwilling individual, in violation of his right to privacy (*Redrup*, ibid).

Section 235.05 of the Penal Law adopted the federal rule enunciated in A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts [*The Fanny Hill* case] 383 U.S. 413, 86 S.Ct. 975, 16 L.Ed.2d 1 [1966] and elaborated in Redrup v. New York, supra, which holds that in determining whether material is obscene the Court must find that "three elements must coalesce: (a) the dominant theme of the material taken as a whole appeals to prudient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value" (*Memoirs*, supra, p. 418, 86 S.Ct. p. 977.) (People v. Stabile, 58 Misc.2d 905, 296 N.Y.S.2d 815 [1969]).

The People urge that the obscenity rule laid down in *Fanny Hill*, which refers to a "book", is not applicable since the material here in question is a magazine. It is contended that a magazine is comprised of various bits of miscellany, unrelated to each other and without unity of thought or content usually associated with a book. Therefore, the test of taking the questioned material as a whole is inapplicable since there is no "whole" but disjointed pieces, each of which must be judged separately. The Court is constrained to reject this argument. A book is a bound or loose leaf work of literary, or printed, or written material (American College Dictionary [Random House]). Books, too, may consist of various treatises, essays, verse, and even pictures and photographs totally unrelated to each other. These separate items which may be unrelated to each other in the questioned magazines are the "whole" to which the *Fanny Hill* test must be applied. Within the meaning of *Fanny Hill* we hold that books and magazines are equated.

The Court is persuaded, and defendant Goldstein concedes, that much of the material included in the magazine affronts and violates existing community standards.

It might be noted in passing that defendants' "expert" witnesses were for the most part unpersuasive. For example, a defense psychologist testified that "42nd Street movies" depicting sexual intercourse did not appeal to prurient interest in sex, but that lingerie ads in The New York Times did.

D-3

Criminal Court Opinion

However, another critical question which must also be resolved is—are the magazines "*utterly* without redeeming social value"? (*Memoirs*, 383 U.S. at p. 418, 86 S.Ct. 975) [emphasis is the Court's]

The issue that must be resolved is whether the sprinkling of articles which are not obscene (and there are some) give the questioned magazines a status which prevents them from being condemned as "utterly without redeeming social value." In other words, are the former a mere cloak to hide the latter? (United States v. 35 mm Motion Picture Film, 432 F.2d 705, 712 (2nd Cir., 1970)).

Vile Language (Grove Press, Inc. v. Christenberry, 276 F.2d 433 [2nd Cir., 1960]; Flying-Eagle Publications, Inc. v. United States, 273 F.2d 799, 803 [1 Cir., 1960], or hateful ideas (Roth v. United States, 354 U.S. 476, 487, 77 S.Ct. 1304, 1 L.Ed.2d 1498 [1957])), are in and of themselves, not a sufficient basis for proscribing a book as obscene.

On the other hand, lofty motives are no defense against a violation of law (Cavanagh v. Galamison, 31 A.D.2d 635, 636, 297 N.Y.S.2d 651, 653 [1968]).

Nor can the Court weigh the "good" material against the "obscene" material in making a determination as to redeeming social value. As *Fanny Hill* says, the publication must be considered as a whole, and the aforesaid three tests must "be applied independently" (*Memoirs*, supra, 383 U.S. pp. 418–419, 86 S.Ct. 975).

Redrup has added three additional tests for obscenity to the three-fold test enunciated in *Fanny Hill*. Mishkin v. New York, 383 U.S. 502, 86 S.Ct. 958, 16 L.Ed.2d 56 (1966) has added a fourth test. As this Court pointed out in People v. Stabile, supra, *Redrup* applies to those cases where the question of obscenity is close. In determining the presence or absence of obscenity in those "close" cases, evidence of the existence of any of the three *Redrup* tests or of the *Mishkin* test, is required. (See also Shinall v. Worrell, D.C., 319 F.Supp. 485). To this group of criteria, relating to "close cases" we add another test: where the material by publication solicits sexual activity between parties, more especially deviate sexual activity, in violation of the provisions of a penal statute.

An examination of the magazines before us discloses that they all contain advertisements for articles or devices, and materials pertaining to sex and alleged sexual gratification. The publishers themselves loudly and proudly proclaim that matters dealing with sex, in all its forms, is what they are seeking to publicize. The sale of the varied sex articles and devices, and particularly those devices known as "dildoes" has been held to constitute prohibited "obscene material" within the purview of Penal Law § 235.00(1 and 2), People v. Clark, 60 Misc.2d

1073, 304 N.Y.S.2d 326 (1969); United States v. Gentile, D.C., 211 F.Supp. 383 (1962). Advertisements, both graphic and written (both are contained in the accused material) offering for sale such articles and devices also constitute "obscene material" within the ambit of the laws' prohibitions and are violative of such laws for the reasons stated in People v. Clark, ibid.

Further, pages 26–27 of each of the issues in evidence contain "personal" advertisements soliciting sexual relations, acts of sodomy, and wife-swapping orgies. The "leer of the sensualist" pervades throughout all of these exhibits.

First Amendment freedoms are not absolute. Schenck v. United States, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470 (1919); Beauharnais v. Illinois, 343 U.S. 250, 256, 72 S.Ct. 725, 96 L.Ed. 919 (1952); United States v. Roth, 2 Cir., 237 F.2d 796, 802, f. n. 5 (1956); Feiner v. New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 267. As Mr. Justice Jackson said in West Virginia State Board of Education v. Barnette, 319 U.S. 624 at p. 633, 63 S.Ct. 1178, at p. 1183, 87 L.Ed. 1628.

It is "a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish."

Surely, it cannot be seriously contended that advertisements such as "Gun for hire—murders executed at reasonable prices—absolute discretion assured," or "save money on late model cars—we steal cars to your specifications," would come within the umbrella of protection of freedom of the press.

Likewise, the personal advertisements appearing in the exhibits before us which solicit acts in violation of our Penal Law, enjoy no First Amendment protection.

Although fornication is no longer a crime in this State, consensual sodomy is a crime (Penal Law § 130.38). Soliciting acts of sodomy is also violative of our Penal Law (Penal Law § 100.00), as is adultery (Penal Law § 255.17).

Such open and notorious solicitation of acts in violation of our Penal Law come within the defintion of obscenity enunciated in both *"Fanny Hill"* supra, and *Redrup*, supra.

They appeal to prurient interest in sex, are patently offensive, violative of community standards and are utterly without redeeming social value. (Penal Law § 235.00). Such advertising, together with that soliciting the purchase of the aforesaid sex articles and devices certainly go substantially beyond "the present critical point in the compromise between candor and shame at which the community may have arrived here and now" (United States v. Kennerley, 1 Cir., 209 F. 119,

121 [1913]), and degenerates to illegality the entire publication, coloring also with the brush of obscenity even that sprinkling of articles which contain some social value.

Of course, even if a publication has a predominant theme which appeals to prurient interest in sex and such publication goes beyond customary limits of candor in description, no criminal liability attaches unless it is "utterly without redeeming social value."

Social value may be manifested by the literary, historical, informational or ideational aspects of a publication, even if it has elements of prurient appeal and is patently offensive. However, we hold that the use of the word "redeeming" in the social value test is a limiting factor—i. e. the social value of a publication *as a whole* must at least have a modicum of significance to release it from blame. ("redeem * * * to release from blame or debt: clear * * *" Websters Seventh New Collegiate Dictionary, G. & C. Merriam Co. 1965, p. 717). The fact that some of the articles in "Screw" are not obscene and may be legally innocuous does not necessarily mean that the publication has social value or importance. As Judge Friendly reminds us, truly pornographic material can not be rescued by the inclusion of a few verses of the Psalms. (United States v. A Motion Picture Film (I Am Curious-Yellow), 404 F.2d 196, 201 [2d Cir. 1968]).

For example, the article by an attorney explaining the law relating to dirty words, does not redeem a publication whose advertising of dildoes, pornographic material and solicitation of sexually criminal acts are the dominant theme of the entire publication. In "Memoirs" the Supreme Court held that the social value of Cleland's book, however small it may have been in terms of its literary merit and its depiction of the mores of a particular period, redeemed its prurient-candid sexual references. We find no such qualitative redemption in Screw. Indeed, the personal advertising in Screw constitutes in the words of Justice Douglas "expression * * * brigaded with illegal action." *Memoirs*, supra, * * * 383 U.S. 413, 426, 86 S.Ct. 975, 16 L.Ed.2d 1, 10.

We thus conclude that the publications before us are obscene and defendants, Buckley and Goldstein are guilty as charged.

The defendant, Balan, alone, asserts his innocence on the ground, inter alia, of absence of scienter. Balan is the president of the company that did the actual printing of "Screw". As to him, we find the People have failed to prove scienter beyond a reasonable doubt. Smith v. California, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959). Defendant Balan is acquitted.

Dated: March 22, 1971

APPENDIX E

***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

E-1

Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

E-2
Candid, Issue No. 8, held not obscene in
Carlos v. *New York*, 396 U.S. 119 (1969)

E-3

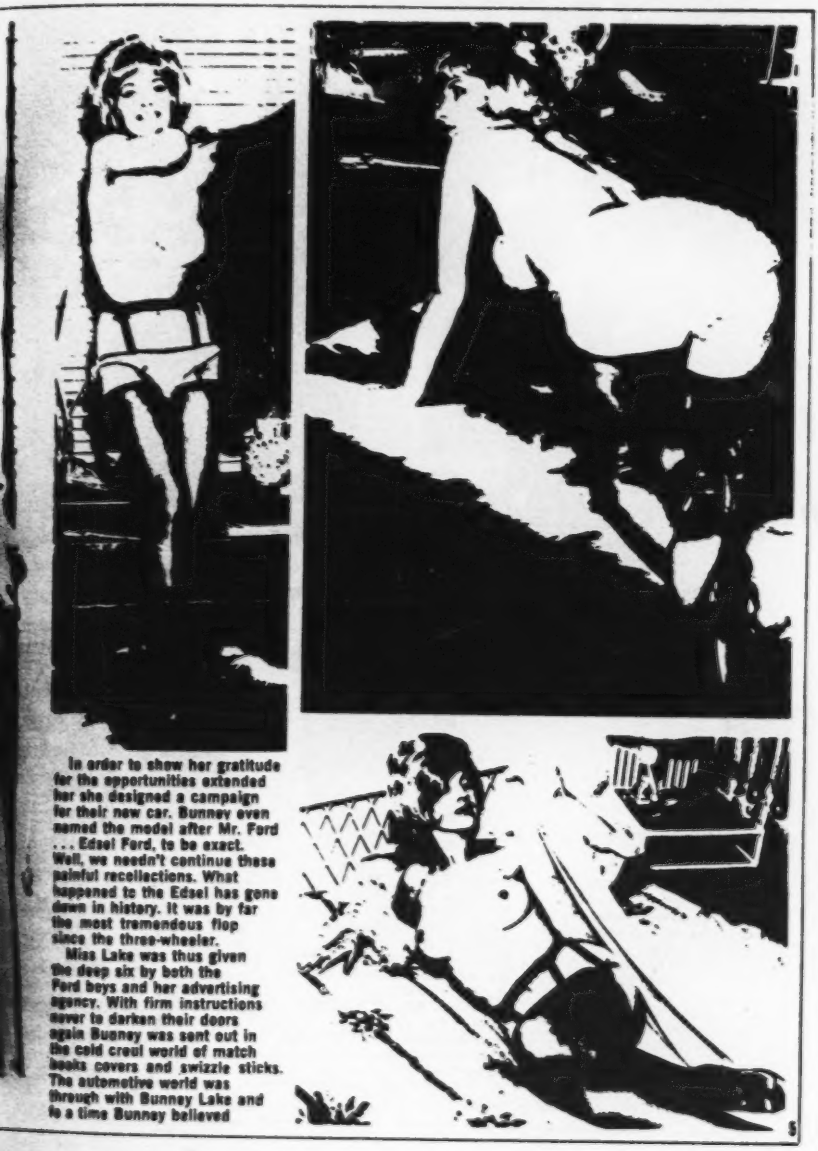
Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

E-4

***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

E-5

Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)



In order to show her gratitude for the opportunities extended her she designed a campaign for their new car. Bunney even named the model after Mr. Ford . . . Edsel Ford, to be exact. Well, we needn't continue these painful recollections. What happened to the Edsel has gone down in history. It was by far the most tremendous flop since the three-wheeler.

Miss Lake was thus given the deep six by both the Ford boys and her advertising agency. With firm instructions never to darken their doors again Bunney was sent out in the cold cruel world of match books covers and swizzle sticks. The automotive world was through with Bunney Lake and to a time Bunney believed

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***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

herself through with everything.

Our photographer discovered Bunney dispensing samples of tinted john paper in a large supermarket. He saw immediately that this was a girl who had what it takes. He approached her regarding a temporary position as a model and she accepted. From the one assignment Bunney's reputation grew and grew. More and more people wanted Bunney Lake. She became a big name. She went into the movies. And at length Bunney was even producing her own films. She was a box office hit for months and months.

Not satisified with films, Bunney went into the publishing business. It looked like she had it made at last.

Then once again the clammy hand of fate clasped her shoulder. She really misses the good old days. And we can understand why.

Bunney Lake's pen name is Allan Ginsberg.....

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Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

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Candid, Issue No. 8, held not obscene in
Carlos v. *New York*, 396 U.S. 119 (1969)

E-9

***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

photo article by Kirt von Hausen

EXPOSURE OF THE SEX ORGANS

The land of The Rising Sun has the second largest movie studio complex in the world. Within the last few years her films have vied with those of the United States, both in this country and abroad. And with good reason. Technically they are excellent. Many a development in lenses and cinemamatic process can be traced to the asiatic islands.

About 1950 the subject matter of motion pictures began to change rapidly in the United States. Television had reared its ugly head and the movies would never be the same. For many years thereafter our Hollywood film makers clung in ostrich fashion,

to the old methods of movie making. Camera work was banal and plots bland. It was this refusal to compete with television on their own terms which gave impetus to the foreign film. Instead of offering the public the same pap they watched on TV (only in Panavision and Technicolor), the producers abroad turned to those areas which television could not enter and American films would not enter, namely: Sex.

And they didn't stop there. Instead of insulting the intellegence of the audience with juvenile themes they made movies with subtle meanings and adult plots. The results were astounding. Not only did foreign films compete in a successful manner with American television, but with American movies as well.

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Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

The money rolled in, and kept rolling in. But it wasn't pocketed in Hollywood. A storm of protest arose from local movie makers, from little old ladies in Pasadena, and from The John Birch Society. "Buy American!" "Stop Runaway Production," "Foreign Films Are Filthy." Bumper stickers such as these were indicative of local filmdom's attempt to suppress the rising tide of movies from across the sea.

Sex is, and has been, the primary thesis of cinema from Japan. There are many underlying reasons for this preoccupation with sex in the Japanese cinema. Like our society, sex in Japan was for many years a subject seldom discussed but oft practiced. With the end of World War II the old attitudes vanished. And, in pendulum fashion, the society of Japan swung to a liberal if not orgyastic point of view. Brothel be-

came big business. Sex fiction reached new heights in sales volume. Dildoes and other sex gimmicks could be purchased at just about any drug store. All this was reflected in the movie industry. They were the first to film the entire act of intercourse, from penetration to orgasm, in a dramatic setting.

Nudity was nothing new in Japanese films by 1956. Then came pictures in which men and women made love. The fondling and caressing of the naked breast was the first step. Next came the exposure of the male sex organ, and finally copulation itself complete with roaming hands and low moans.

Felatio, cunilingus, and all the rest of the variations of love making are now fair game for Japanese movies. And the public is buying it. Even sexual deviation and homosexuality have become legitimate subjects for the camera's all seeing eye. It can

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Candid, Issue No. 8, held not obscene in
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Carlos v. *New York*, 396 U.S. 119 (1969)

COPY BOUND CLOSE IN CENTER

E-13
***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

be summed up in one statement: There are no sexual taboos in Japanese films.

Their influence on American film makers has been tremendous. Because of Japan's competition the US has been forced to take a second look at their methods and subjects. During the last five years movies in America have become increasingly involved with sex. Nuds and semi-nude scenes are included with more and more frequency. And once in a while "un-cut" version of a film can be viewed in an "art-house."

It's not inconceivable that in the coming years our movies will follow suit. It is inconceivable that television will become sex oriented, at least in our lifetime. American movies must give the public something that they can't have on TV.

13

E-14
Candid, Issue No. 8, held not obscene in
Carlos v. *New York*, 396 U.S. 119 (1969)

ORGY AT 12,000 FEET

fiction by Shag Hamilton

HOT SKY
by
Shag Hamilton

It looked like it was going to be a slow kind of weekend, thought Rod Sweazey as he drained the condensed moisture from the fuel tanks of his Beech Bonanza. Most weekends brought a deluge of requests for taxi service to LA or Phoenix or Vegas and he could pick up five hundred easily, but the kind of a day it was encouraged people to play their games at home. The light drizzle put a sheen on his flight jacket, and the droplets resting on his brown, wavy hair gave him a rugged appearance.

After checking out the plane, he leaped onto the wing and dropped his six-foot frame into the cabin. He didn't care too much about the look of business—his bank account looked good enough, though there was always room for more. Right now, he figured he'd take the plane up for a spin and shed

COPY BOUND CLOSE IN CENTER

E-15

***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

how far the weather front extended. The propeller ground over slowly several times before the fuel-injected engine caught. After the initial burst of heavy exhaust, it purred pretty well. It damn well better, Rod thought. He'd just had it rebuilt right down to the mains, and for that, they charged plenty. He flicked on the radio.

"Beech NR34773A to tower — request taxi instructions. Over."

"Tower to Beech — advise against take-off. Ceiling's a thousand and getting lower. Over."

"I'll be back pretty quick. Over."

"Taxi to east end of runway two and hold."

Rod released his brakes and revved the motor. The plane moved past the other private aircraft toward the other end of the landing strip. The radio cut in.

"Tower to Beech — return to loading area. You have a passenger for San Francisco. She looks like a real swinger. . . . Over."

"Roger."

Rod jammed on his starboard brake and swung the plane around. He spied a blond in a black turtleneck and capri pants as he stopped at the gate.

"Are you Rod?" she shouted above the roar of the engine.

He nodded. She ran toward the plane and, clasping Rod's outstretched hand, pulled herself on the wing.

"Going to Frisco, huh? Rod asked.

"Why not?" she answered, jumping frikfly into one of the seats.

"No luggage?"

The blond shook her head. "Nope."

"Look, sweetheart, I don't joyride to Frisco just for the hell of it. It'll cost you two and a half bills."

"Okay," she said casually flicking her hair. "My fiance'll be at the airport and he'll pay you. We're getting married tomorrow."

"Then how come no luggage?" Rod rested his hands on his hips and stared at her determined to get an intelligent answer.

"Because this way, he'll have to buy me a whole new wardrobe . . . stupid." She said the "stupid" in a friendly, vivacious fashion that made her irresistible to Rod.

"Okay. Shove over." She made room on the seat, and he dropped lithely into the cabin.

As the plane took off, Rod thought what a shame it was she going to get married. If she wasn't, he'd make a play for her; but as things stood, he'd probably be wasting his talents. Upon breaking through the cloud ceiling, the vista was inspiring. The sky glowed a rich blue, and fluffy clouds floated

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"I HATE CLOTHES!" SHE SAID PULLING OFF HER SWEATER.

beneath them like cream puffs. Rod switched on the cabin heater. The blond stretched her legs and took a deep breath as the warm air rolled over her body.

"What's your name, doll?"

Kitty Baker . . ." She looked Rod over thoroughly. "Tomorrow, it'll be Kitty Hansen. Just the same. I'm Kitty no matter how you look at it." She put her arms behind her head and expanded her bust line.

You sure are, thought Rod as his eyes roved over the magnificently constructed body. Each firm breast jutted individually beneath the tight sweater, and the tips displayed themselves prominently under the material.

"It sure is private up here," she murmured. "A person could do *anything* he wanted to and nobody'd see him." She looked into Rod's blue eyes. "I guess you'd still have to steer though, huh?"

Rod looked at her levelly. "When we get to twelve thousand feet, I throw her on auto pilot so I don't even have to do that."

"Do you sometimes fly in the nude?" she asked blithely kicking off her shoes.

"Uh uh. Most of my passengers wouldn't go for that."

"I wouldn't mind if you did." She looked at Rod significantly, practically undressing him with her eyes. He leveled the plane off and threw it on automatic pilot. She reached over, unzipped his damp flying jacket and slid it off.

"You know something?" she asked rhetorically. "I hate clothes. They inhibit me in all the wrong places." Unashamedly, she pulled her sweater over her head and threw it on the back seat. "Undo my strap, will you, sweetie." She turned her shapely back toward Rod. His experienced fingers responded nimbly. The bra fell away revealing her large, firm, luscious breasts. She rubbed her bare skin against the seat back, joyously appreciating her bodily freedom. Rod pressed his lips over her rigid nipples, and, as he let his tongue glide around the red tips, she unbuttoned his shirt. He put his arms around her squirming torso. His fiery kisses raced over the curvature of each warm breast and across the tender skin of her stomach. Her body reeled with rapture.

"Darling," she whispered raising her body upwards, "I want to feel your lips all over."

Rod gently pulled her capris. They slid effortlessly down her slender form.

Her legs spread instinctively apart. He tasted her throbbing heat as she unbuckled his trousers and caressed him with her fingers. She sank lower into the seat, and their eyes met in mutual understanding. She wrapped her legs around his, longing, yearning for satisfaction. Their bodies rose and fell in harmonious rhythm. As the pace quickened, Rod felt her fingers dig into his buttocks, pulling, desiring – She wanted all of him. "Give me over-

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SORORITIES AND THEIR SICK SEX

THERE HAS BEEN AN EVER INCREASING BLIGHT ON OUR AMERICAN CAMPUSES DURING THE LAST
YEARS. FEMALE BRUTALITY HAS NOT MADE THE HEADLINES, AND FOR GOOD REASON. THE
NG GIRLS OF THIS COUNTRY, EVEN MORE THAN THE BOYS, MUST BE ABOVE SUSPICION IN EVERY
AND, AS ADDED PETROL TO THE PYRE, THE GIRLS IN OUR COLLEGE SORORITIES MUST BE NEEDS
FROM A FAMILY OF STANDING IN THE COMMUNITY.

IT'S NOT IMPOSSIBLE FOR A COLLEGE BOY TO JOIN A NAME FRATERNITY ON THE BASIS OF HIS ABIL-
T SPORTS OR SIMPLY BECAUSE HE'S A JOLLY GOOD FELLOW. BUT THE FEMALE OF THE SPECIES REG-
ES HER SOCIAL STATUS WITH FAR MORE DISCRIMINATION. STATUS IS THE WATCHWORD, AND TO LOSE 17

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[redacted]

[illegible] S MUCH AS TO THE ORIENTAL CONCEPT OF LOOSING FACE. WOULD THAT OUR WAYS PERMIT. MANY GIRL WOULD COMMIT HARI-CARI AT THE PROSPECT OF BEING "RUINED" IN THE EYES OF THE UPPER CLASS. THESE ARE THE TWO MAIN REASONS THAT "HAZING" IS SELDOM IF EVER MENTIONED IN CONNECTION WITH A SORORITY. THE FACT OF THE MATTER IS THAT NOT ONLY DOES HAZING EXIST IN SORORITIES, BUT IS FAR MORE SADISTIC AND BRUTAL THAN EVEN THE WILDEST FRATERINITY INITATION.

HISTORICALLY WOMEN HAVE BEEN CONSIDERED THE MORE DEVIOUS AND MALIGNANT OF THE SPECIES. THE TERM "BLACK-WIDOW" CONNOTES THIS MEANING BETTER THAN MOST. WHILE SMALL OF STATURE THE INSECT IS DEADLY AND FAST. THE SAME APPLIES TO THE YOUNG GIRLS IN OUR UNIVERSITIES. THEY'VE BEEN TRAINED SINCE THE AGE OF SIX NOT TO ALLOW THEMSELVES THE CATHARTIC EFFECTS OF OPEN VIOLENCE. AND THEY'VE ALSO BEEN TAUGHT TO REPRESS ANY NORMAL SEXUAL FEELINGS. THESE TWO FACTORS COMBINE TO MAKE GIRLS THE MOST SADISTIC OF GOD'S CREATURES. IF GIVEN THE OPPORTUNITY.

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ON THESE PAGES YOU SEE ACTUAL PHOTOS TAKEN BY A FREE-LANCE PHOTOGRAPHER, FEMALE, WHO SECRETED HERSELF IN ONE OF THE BEST KNOWN SORORITIE HOUSES ON THE WEST COAST. BY THE OF INFRA-RED FLASH AND FILM, SHE WAS ABLE TO OBTAIN PICTURE AFTER PICTURE OF THE BRUTAL AM SURROUNDING THIS SORORITY HOUSE OF SHAME. AT HER REQUEST, THE NAMES OF ALL CONCERN- AVE BEEN WITHHELD.

IN THESE PHOTOGRAPHS ONE OF THE TWO GIRLS IS A PLEDGE. SHE MUST SUBMIT TO THE SHAME- ASTS PERPETRATED UPON HER BY MEMBERS OF THE SORORITY.

NOTICE THAT BOTH OF THEM ARE ATTIRED IN HIGH SPIKE HEELS AND LACY UNDERWEAR. THIS IS THE ORM OF THE DAY FOR SUCH CLANDESTINE ACTIVITIES. AND IT'S OBVIOUS THAT THE GIRL IS OBTAIN- A SEXUAL THRILL FROM INFLICTING PAIN UPON THE PLEDGE.

THE SESSION STARTS WITH THE PLEDGE MASKED. THE MEMBERS OF THE SORORITY TAKE THE INIT- TO THE MAIN ROOM OF THE HOUSE AND, IN THE DIMMED LIGHTS, BEAT HER WITH PADDLES

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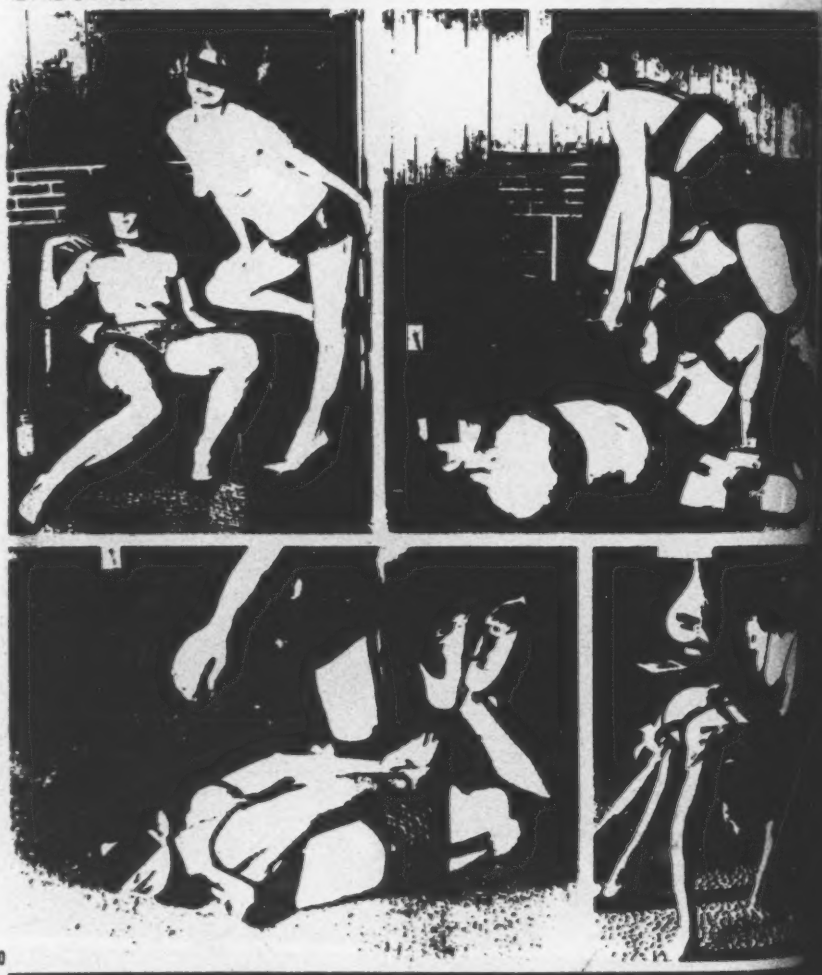
AND WHIPS. HER WHIMPERING SOBS AND CRIES OF SHARP PAIN ARE TO NO AVAIL AGAINST THESE HARD HEARTED HANNAHS. THEN OTHER MORE DEVIOUS METHODS ARE BROUGHT TO THE FORE. LIGHTED CIGARETTES ARE EXTINGUISHED BY GRINDING THEM INTO THE SOFT SKIN OF THE GIRLS ABDOMEN. THE TWISTING AND PINCHING OF THE BREASTS IS FOLLOWED BY STINGING SLAPS TO THE FACE. SHOULD THE GIRL MAKE ANY SIGN OF PROTEST. TOBASCO SAUCE AND RAW PEPPERS ARE FORCED DOWN THE GIRLS THROAT AND IN ANSWER TO PLEAS FOR WATER. SHE IS HANDED A CUP OF VINEGAR WHICH SHE HAS TO DRINK.

QUITE OFTEN THIS MAULING IS FOLLOWED BY A SEXUAL MOLESTATION BY A LESBIAN MEMBER OF THE SORORITY. (IN COLLEGE CIRCLES SOME ENTIRE SORORITIES ARE KNOWN AS "DYKE HOUSES"). THE PLEDGE MUST SUBMIT TO THE SEXUAL INSULTS AND BRUTAL BEATINGS OR THE REST OF THE GROUP WILL "RUIN HER REPUTATION."



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IS THIS FEAR OF LOSING FACE THAT KEEPS THE VICTIMS QUIET. EVEN THOUGH A DOCTOR'S
R, AS IN MANY CASES. HOSPITALIZATION IS REQUIRED TO BRING THEM BACK TO HEALTH.
HE GIRLS STATE THAT THEY WERE CRIMINALLY ATTACKED BY AN UNKNOWN PERSON OR PERSONS
IR WAY TO THE SORORITY HOUSE. OR THEY MAY SAY THEY HAD AN ACCIDENT. WHATEVER THE EX-
THERE ARE A GROWING NUMBER OF DOUBTFUL PARENTS AND AN EVEN LARGER NUMBER OF PHY-
AND NURSES WHO HAVE HAD TO TREAT THE GIRLS.
E BELIEVE THAT THE DAY IS NOT FAR OFF WHEN THE NATION WILL BE ROCKED BY A SERIES
NDALS SURROUNDING SORORITIES AND THE SEXUALLY SADISTIC CIRCUMSTANCES SURROUNDING
ATION OF GIRLS INTO THESE PERVERTED ORGANIZATIONS.

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THE BARREL

photo article by Bob Gra

Sunny Southern California, and in particular Guasti, was the sight of the Annual Grape Festival held by t Cucamonga Growing District.

Although recent times have seen strife and labor problems in the area Cucamonga still leads the nation in t production of wine grapes. As a sort of "hang-over" from the age old fertility rites of Greece and Italy the gr ers of the area host a day long orgy in honor of the vine.

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ROLLERS

The girls of the area, grapes aren't the only sweet things they grow there, join in the festivities in a variet, f ways. An old fashioned grape crushing contest leads the action each year. Just for the record the winner ueezed out 4 gallons of juice in five minutes this year.

Needless to say the wine flowed freely as in the Bacchanalia of the old days. Before the day was over grand-, grandma, the kids, and even the dogs were more than a little juiced. In one contest the winerp(as it does

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every year, sets up scales loaded with 16 magnums of champagne and invited the bikini clad girls to ma
weight with that of the wine. Pretty Judee Morton managed to balance the scales exactly and then 10 ma
of expensive champagne was cut loose on the crowd.

Since this contest was held rather late in the day most of the wine wound up on the people rather t
them. Somebody started a squirting battle then all hell broke loose.

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...was a barrel rolling contest with empty wine casks. Everything from slow moving dogs to a Volkswagen ...ded over by the wildly careening barrels.

...the sun went down people hosed themselves off and retired to their homes to continue the festivities. ...a sneaking suspicion that this festival accounts for the dash of births the following spring. At least it ...hind.

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ANNIE (LARGE CHARGE) WALKER

SHE FINGERS FLIES ALL DAY

Annie (large charge) Walker is the last of the two-fisted, whisky-drinking, lead-slinging cow girl
the old West. Annie is so tough that once she took on a whole bar full of men by herself. Inside of fifte
26 minutes she had beat off every one of them with her bare hands.

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the country.

That's why she's so tough. Anybody who fingers flies all day is bound to have a few cracks made. But just let a guy come on with some smart remark and Annie will whip out her .44's and draf a bead on him. Being on the business end of those .44's is enough to make any guy unbuckle his belt and drop his gun.

About three years ago Annie had some trouble with squatters. It seems that these guys got into her ranch and planned to stay. She warned them to pack up and leave by sundown, or else. Well, come sun-

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down these guys are still there. Annie walks up to the leader, a great big brute, and tells him to leave. He just laughed and pulled out his rod.

Annie turned tail like she was going to run away, but all of a sudden she whirled and shot his gun right out of his hand. The other two knew they had met their match so they dropped their rods and ran. She didn't have any more guys coming on hard around her place.

Annie (large charge) Walker, the toughest breeder we ever knew. If you run up against her you'll find out what we mean.

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SOCIETY OF EVIL

"THE TWIN GIRLS, MASTERFULL. ONE WATCHED WHILE YOU DID IT TO THE OTHER."

He did not have to wear the blindfold.

"Your reputation is such that we do not have to waste," the dark Filipino told Carey.

The thin man, with pre-sharp features sipped his *Cuba Libre* and felt the lime rind in the cool smile he could not help when he was happy.

"Where do we go, then?" he asked. "Any casinos to waste your compadres?"

The Filipino did not like the way Carey used the Spanish word. But then, he was used to this. The Americans resented to their place were not likeable people.

"We come to the one made Mr. Carey," he said politely. He have a [illegible]

[illegible] Carey smacked his lips. He [illegible] could gain he understand this game was good he thought. It was time [illegible]

He was pleased that he didn't have to be blindfolded. Most of the others had to be [illegible]. But there were not to be trusted anyway. A lot of them were schizophrenic, so full of hate and accompanying tremors as to be, well, disturbed.

"What's your name," Carey asked the Filipino in Tagalog. He spoke most of the major languages of the world, fluently, and had made special studies of the more exotic ones, such as the Philippine National tongue.

"Dadong," the Filipino answered, surprised. "You speak Tagalog?" he asked in dialect.

"Oho," Carey answered, using the polite form of yes. He enjoyed even this form of sadism—a small hurt inflicted in the name of incongruity. Here he was, a young, handsome, wealthy man, who liked like a dissolute salesman, causing an Oriental to lose his proud inscrutability. It was all too delicious, he mused.

"But let's get along," he said in English, enjoying the curt twist he gave the words. He could have made a friend, he knew, but it was his nature to unnerve people—make them edgy. This was why he had gained a certain reputation, and now he was determined to become a master. This trek to Manila, after Africa four months ago, then Japan, Hong Kong, and Macao was to firmly establish his superiority.

Dadong had come to his room in the Shelbourne Hotel, and they had step-

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fiction by Jory Sherman

ped in the bar below, the Here's How, for a drink before making their journey to where Carey had to go.

The humid night air of Manila was a heady balm to Carey. He remarked about this to Dudong as they climbed in his jeepney, a converted jeep that served as a taxi, a carryall.

"It smells a little like blood," he said.

"There is plenty of blood here, still," the Filipino said, jerking his head in the direction of the bay, where the sunken ships of the rising sun rotted in rust. "Still plenty," he affirmed, thumbing in the direction of *Intramuros*, the walled city still in ruins from the Japanese occupation and the subsequent retaliation by MacArthur.

"*Maganda!*" Carey exclaimed. "Delicious." And Dudong seemed to shiver.

* * * * * *

From the road they were taking out of Manila, Carey thought at first they were going to Baguio, a resort in the mountains. But the jungle began getdeeper underbrush. Dudong drove very fast then, too fast for the terrain, the headlights bouncing off green walls, then swerving into darkness. It seemed like a labyrinth to Carey.

"Where are we? he finally asked.

"This is the country of the Igorots," Dudong said, and there was a chill in his voice.

Good, thought Carey and he smacked his lips. The Ingorot were a small band of primitives who lived in the mountains. They wore bright headbands and carried long knives, not the *kris* of Mindanao, but a blade more like a machete. It was used to chop off human heads.

They were headhunters, Carey knew, but more appealing to his imagination was the fact that they were also cannibals. A perfect setting to proclaim his old deeds and venture into newer, more evil ones.

Finally, they came to a clearing in the dense jungle. A rather large, rambling house was at one end, incongruously leering through bright-lit windows. The jeep roared to a dusty stop and Dudong leaped out. Carey followed him.

Dudong knocked on the door. In a moment it opened.

"Ah, Dudong, right on time. I see you brought our friend. Good." The man who spoke was tall, thin, distinguished looking, with grey-flecked sideburns, blue burning eyes. He wore a white blazer, monogrammed, dark expensive slacks, red sport shirt and white shoes. He extended a hand to Carey.

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"John J. Carey, of course," he said cordially.

"And you must be Senor Alcazar. Senor Don Alcazar," said Carey as he shook hands with the tall man.

"Come in, the others are waiting," Alcazar said. The three of them went into a large room, richly, tastefully furnished. Men sat around in armchairs, on the divan, and waved to carey as he came in. There were trophies on the walls, big game, mostly, and weapons from *Kris* to a Weatherby .300 magnum. The rugs were bear—polar, grizzly and black.

"Allow me to introduce you Mr. Carey. Gentlemen, this is our guest, John Jove Carey." Some of the men rose. Most acknowledged the short man with the husky build.

"This is Michael Redmond," Alcazar said as he went around the room. "Jacob Levy, Kirt Felix, Avram Czarni, Horst Gruenig," he went to each man, and Carey acknowledged each introduction with a handshake or a nod. They were from all over the world, he knew. Some of the names he remembered from the horrible deeds that had been credited to them. Such things got around in these circles, quietly, and Carey swelled with pride that he had at last met them.

But sit down, Mr. Carey—you must be exhausted from your trip," Don Alcazar offered.

"Not at all, Senor," he said, but sat down at the request.

"You understand the terms of the membership in our society, do you not, Mr. Carey?" the suave Spaniard asked.

"I have thought of little else, I assure you," he answered. He sat back, as Dudong brought drinks for everyone in the room. "The dues are $5,000 a year, violation of secrecy is punishable by death—a slow, agonizing death, I understand, and I must keep up with my evil activities, reporting at regular intervals to The Society of Evil. I also believe the Society has certain, ah, shall we say, group activities?"

You are quite correct, Mr. Carey. Now, there is another condition, which you overlooked. We are quite anxious to hear of your recent improprieties against society, in *detail*." A warm smile played over the thin cruel lips of Senor Alcazar.

Carey took a sip of his drink and told them. Kurt Felix hunched over in his chair, listening, his eyes glittering. Levy looked out a window, tears of delight welling up in his eyes. Czarni rocked back and forth, chuckling quietly to himself. Horst Gruenig pinched his fingers together and grit-

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NARIANE BARO

WE PUT OUR CONFIDENCE IN HER RIGHT AWAY

Nariane. (and that's the way she spells it) Baro is a busty lass with a lot of class. She's just recently come to our shores from England.

And like a lot of models she's long on ambition and short on money. Nariane aspires to work, not as an actress or a singer, but as a publisher. Back in the British Isles she gained a bit of experience as a staff writer for a tabloid newspaper. That, backed by some work in the field of magazine market analysis, is the sum total of her experience.

Although it's limited, she feels her background is adequate for what she has in mind. Nariane wants to put out a magazine for women that features men. She intends to avoid the beefcake types altogether and concentrate on the virile, masculine models. If you ask us, the entire concept is kookey; but then you know how some women are. Once they set their minds on something it's like moving hell and high water to get them to

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change their minds.

Luckily for us, and for you as well, Mariana came to us first. Since she wanted to do a magazine we thought she could use the benefit of our experience. She's such a nice kid that the first time we met her we put our confidence in her and disseminated what data we had at hand. She in turn was so greatful that she offered to pose for us. Would you pass up a chance like that? Well, we didn't either.

Nice as she is, and pretty as she is, we still think she'll never get her magazine off the ground. But then we can't say for sure . . . Stranger things have happened in the publishing business.

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MEET SMOKEY THE BARE

You've all seen the silly looking bear with the peaked hat who's always bugged about people putting out their cigarettes and crushing their camp fires.

Well, we think the Forestry Department has the wrong idea. Like who is going to listen to a talking bear? And if you did listen would you take him seriously? Of course not. Talking bears are for kids and adults aren't about to give heed to a cartoon character.

Instead of using an unbelieveable animal as their symbol we think that they ought to employ the attention getting facets of the girl pictured here.

We call her Smokey The Bare and we believe she's bound to attract the attention of the male campers and smokers. Wouldn't you be more than happy to crush your butts for a girl like

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WHAT THEY DON'T TEACH IN COLLEGE

article by Rainey Scott

On May 7th, 1963, at Princeton University, all hell busted loose. Princeton students by the hundreds set fires, ripped up a railroad station, tore screens from private homes, dumped a one-ton compressor into the streets, invaded a formal dance at Westminster Choir College where they tossed firecrackers all over the place, and they ended a night of bawdy hoolumism by conducting a "panty raid" at the college's women's dormitory.

Fourteen students were arrested, but Governor Hughes commented mildly that "It's spring, and the sap is running."

Dr. Robert G. Coheen, president of Princeton University, saw it differently. "Their conduct cannot be brushed aside by "spring madness," 'boys will be boys' or any such euphemism. This riot was a shocking display of individuel and collective hooliganism on the part of young men who have no possible justification for sinking into it." Dr. Coheen said.

It is seldom that our educators or politicians make such a frank and honest statement about our college youths. Nor do they seem to be too concerned with the "whys," or the answers that will stop such actions. That these things do exist at the junior level is evidenced by such statements as we find neatly buried in many of our newspapers, like the statement issued by the president of an exclusive eastern women's college. "Students who become pregnant out of wedlock, live in promiscuous relationships with men off campus, or drink intemperately will be dismissed summarily."

Or the constant hassle over corruption in the athletic departments of our universities, about "paid" athletes, or special exams or treatment for athletic heroes. And the "dropout" question has been plaguing us for many years. Finally, it seems that those in responsible positions are no longer saying "well, you know how kids are –

Serious studies of the reasons [illegible] this widespread college disobedien[illegible] immorality, rebellion and undisciplin[illegible] unlawful mania, are being made [illegible] sociologists, doctors, and psychiatr[illegible] and there are a few answers. Th[illegible] are many causes for the chaotic st[illegible] of affairs in our schools, but none h[illegible] easy remedies. In combination, th[illegible] could threaten our entire educati[illegible] system, and the future of our repu[illegible] and government.

One contributing factor is the lo[illegible] ing of marital age. With the aver[illegible] marrying age at 20 for men and [illegible] for women, colleges are now [illegible]

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couples who have the right to relations, by law. So the single and females on campus feel they ething, and are spurred re relations to show that they nature as their married class-

es, the Kinsey Report, and other studies, show that the cen- moral gravity has shifted. Chas- no longer desired or sought after. ity is prevalent, not only in es but throughout American soc- College girls today tend to think girl who tries to maintain her vir- until marriage, as some sort of a

Another reason for this letdown of the sex barriers is the widespread use of, and availability of effective contraceptives – notably the type taken orally. Fear of pregnancy used to keep girls from indulging in sex relations, but today, as one girls put it: "I just take one of those pills every morning, as I would a vitimin pill. Nobody's going to call me a party pooper."

A sociology instructor at a California college states that students are coming up with some "diffies," as excuses or justification for their wild sexual behavior and attitudes. "We find primitive tribes who used to beat themselves into frenzies of sexuality every time a volcano or a fierce enemy threatened their safety. They drank themselves into a stupor, cohabitted freely, and finally sacrificed their virgins to appease an angry god.

"Today we have a new threat–the bomb. Students seems to have taken the possibility of sudden anihilation to heart. They are allowing their native instinct for procreation to be preverted into back stair sex.

"It isn't much different from the attitudes of soldiers during the war. All of us who were in service, at one time or another, thought or said 'let's not fight sex–*tomorrow* we might be dead.'

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"It seems that we have made being on a war alert a way of life. So many young people have their own version of the deprived bowing down to a force that might destroy them. Panty raids are little different than the ritual of tossing a virgin into a volcano's maw. The lingerie they clamor for are really only fetish symbols of virginity."

Money is an important factor in student behavior, others feel. The automobile has become the focal point of all activity, and the big man on campus is no longer the football hero, or president of the class, but the guy with the flashiest set of "wheels," and the most bucks in his jeans. But students aren't interested in the car as much for mobility, as for privacy. One student stated: "I don't care if my jalopy has wheels or not, as long as it has doors."

There is a growing desire to live off campus, for the freedom it gives, from prying eyes of school officials. A trend is shaping up too, for students to attend college in their home town, as they feel they can get away with more living at home. This speaks poorly of the parental and family influence on morals.

Illicit sex is a growing problem, although it is not the only major one. Many scandals have come to light about cribbing — cheating on exams. The worst part of this, officials feel, is the defensive, "so what?" attitude of the students. The young people shrug and say they are no different than their parents, who do anything to gain a business advantage, or make out false income tax returns to cheat the government, lie about their age, and in general, live a life of constant cheating one way or another. The youngsters consider cheating on a wife or husband no worse than our different form of cheating on a test in school. And who is to say differently?

Students who are on scholarships — the supposedly "top" students — are worried because of the necessity of maintaining top grades. Unless they do, they were dropped, and being financially unable to continue, they took chances on flunking out. Even prep college youngsters have admitted cheating in order to make sure of one of the few available openings in "name" colleges, so crowded are our colleges.

Recent athletic scandals, having to do with cooperation with gambling elements by coaches, players, and even officials at games, tend to destroy the illusions students may have about "the old college ties," or "do or die for dear alma mater." In one recent survey about this, seventy percent of students

CONTINUED ON PAGE 8

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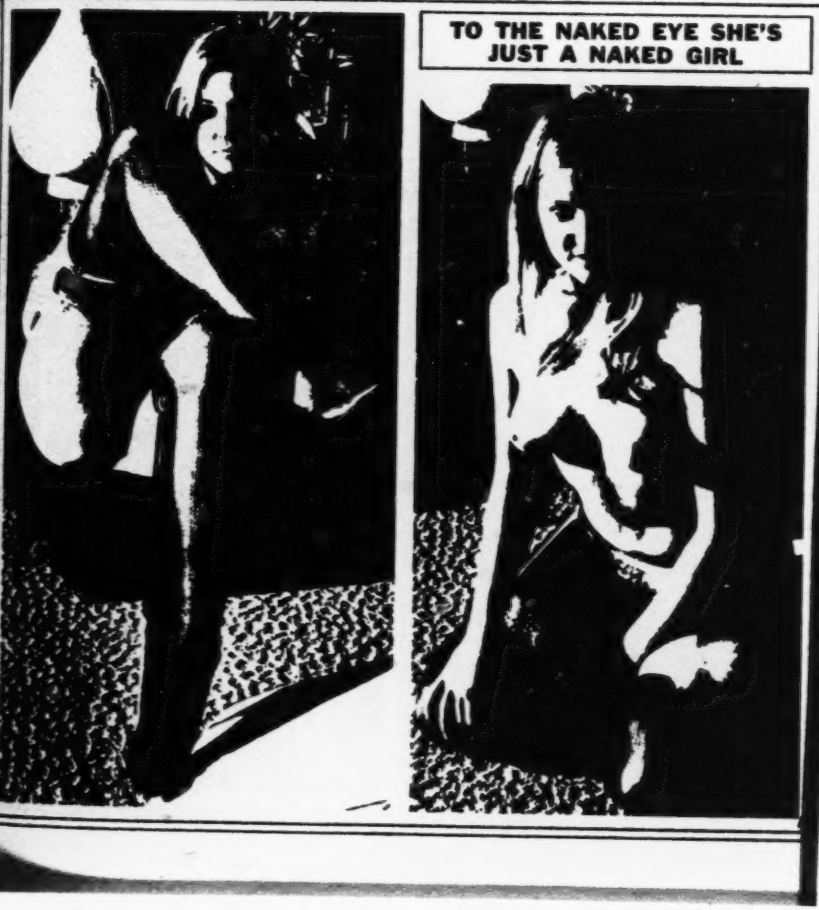
MISS CRISS WELL PREDICTS...



IN CENTER

E-46

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Criss Well is an unusual girl. Aside from her obvious talents as a model she claims the ability to forsee the future. She's clairvoyant and gifted with E.S.P. (Extra Sensory Perception), as well as being a student of the occult.

Now we were more than a little dubious about these so-called abilities of hers. After all, to the naked eye she just looked like a naked girl. Not that we aren't taken with naked girls, especially when they look like Criss.

Anyway, back to the story. In order to demonstrate her unique talents, and to prove to us that she didn't have any devices hidden on her person, Criss stripped to the skin. Then she instructed us

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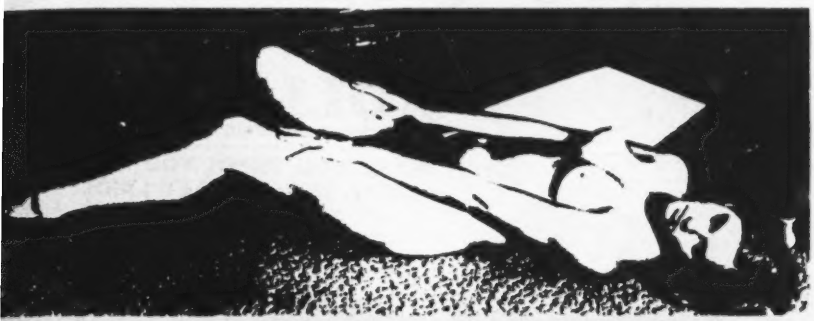

to ask a question that only we knew the answer to. Well, our photographer did and she slapped his face. Then our editor asked a question and she slapped his face. She knew the answers alright. Come to think of it the slapping was a bit out of order. You can't blame a guy for trying can you?

To continue her demonstration Criss made a few predictions for us. We won't reveal what they were, but we can tell you they came true right then and there. Yes, it was a lot of fun playing prediction and other games with Criss. In the future we hope to play with her again. Perhaps we'll invite some other people and we can all join in the fun. If we do, watch for the photographs of the party. They ought to be interesting to say the least.

E IN CENTER

E-50

Candid, Issue No. 8, held not obscene in
Carlos v. *New York*, 396 U.S. 119 (1969)

OH, HOW THE MONEY ROLLS IN

article by Jess Walter

When you see bad-guy Edward G. Robinson, bending over a hot stove, then suddenly straightening up, switching to the "Little Ceasar" role and saying "You're gonna make it my way — see." in order to make you buy some instant coffee, don't think that poor old Robinson—or Little Ceasar has come down the yard-stick of fame. Not at all —for a rainy day, and — (the studios love it) he is adding to his saturation image in the business, with a TV commercial.

Or, you see pretty-puss Robert Taylor standing by, while his real life wife, Ursula Theis, brews up some instant coffee (the same brand, incidently, that Ed Robinson drinks), and he says what a lucky guy he is, and she says, no—it's her that is lucky. Well, any way you look at it, this pair are using sex—plain, unadulterated sex, to sell a few pounds of coffee.

And what guy among you hasn't decided—right on the spot—that you're going to become a cigar smoker after seeing the sexy, throaty Edie Adams give her first class impersonation of Mae West (with a lot of modern improvements) urging one to "why'ncha pick me up, and smoke me sometime?"

Even the top-flight queen of the dramatic actresses, Barbara Stanwyck, advocated that you try that same brand of instant coffee, and who the hell wouldn't, with Barb herself brewing up something in the kitchen?

Then there's that wine (although this writer secretly believes there's a conspiracy going on with a well-known automobile manufacturer) that has James Mason (for the older set), Tab Hunter, (for the used-to-be teenagers) and Ceasar Romero (for the continental or Latin type)—all raising this glass of wine, and proclaiming it to be "the" wine . . and the only one.

Then there's Julie London—that girl with the sexy voice . . . *"You've got a lot to like, with a . . . certain cigarette . . . "* This sexy dame has been the cause of more lung cancer cases, if statistics on sales can be believed, than any single executioner on earth.

And there are a lot more, using sex to sell you whatever product pays the freight — from flour wax to shaving cream — and don't think these advertising men miss a bet. Who the hell

THEY MAKE YOU THINK YOU CAN BUY A NEW CAR AND GET LAID AT THE SAME TIME.

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E-51

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...female sex) could ignore a commercial that shows Mamie Van ... winking over a guy's shoulder ... a certain kind of haircream. ... think that Mamie is winking at ... guys? Come on—the ad men aren't ... stupid. Mamie is simply saying ... the female member of the gang, ... old, troupe—or what have you: "Look, stupid—so you aren't a perfect ... eight—so what? Go on out and ... some of this brand of hair cream ... your "tiger"—and you've got it ..."

And there's another thing—this "tiger ..." First, this dame comes on like ... Bara, saying something about ... Tigers—and you know who you ... For gosh sakes, show a little ... men—if the average American male thought he could wind up on a tiger-skin rug with *that* dame—in *that* outfit—well, the factory would be working nights—believe me.

And there's more than enough sexy persuasion (not friendly—just sexy) for the feminine gender, too. Take that hair set commercial—where the guy *whizzes* in the window—and guess what he's got for little old straight hair—who can't get a date? You know damned well what he's got. He gives a sexy spiel—loaded with male allure—and when he disappears—guess what's left—? The hair spray, of course—plus unlimited dates from Sinatra to Cary Grant—or maybe even Bobby Vee—if that's your particular cup of tea.

Then, who do you think is selling headache tablets? Nobody else but Joe Cotton—so often, in fact, that this writer has been apprehended in a screaming, ear-clutching position, shouting "Get your cotton-pickin' commercials out of my ears."

And why do you suppose that the regulars like Johnny Carson, or Lee Crane, or Jack Paar keep interrupting all the best artists and talents in the world, to sell a shoe polish, or a detergent? And they don't ease off for grandpa, either. That just ain't no juvenile delinquent that comes to a screeching halt in your living room, huddy, and entices in a sexy sixty-year-old seductive voice: "Put a Dodge in

CONTINUED

SE IN CENTER

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your garage—honey . . ."

Age doesn't matter—they've got a commercial for everyone . . . or maybe a hundred for each one is more like it. Remember the one that says: "How long is it since your husband asked you to dinner and danced with you?" Then they show a 75-year-old dame who ought to know better, shampooing her hair with a color rince, and the next thing you know—who is dancing with her? A young doctor or scientist, or even her grandson.

Even if you're just an ordinary housewife washing out the diapers — they aim some commercials at you. Like — use borax in your baby's wash, so even if he stinks, the diapers smell like a spring day in a rose garden. They don't miss a bet, and they don't just shoot for woman, either. Take some of those dog food commercials, for example. My dog has learned to yell, loud and clear: "I want some Gravee Train—!" I try to talk him into some other brand, but he sits there, stupid like, and bull-headed, and says "I know Doctor Ross's dog food is dog-goned good (ARF), but— after all— who's eating this damned horse-meat, anyhow?" You ignoramus humans probably think that Dr. Ross is a vetinarian. Don't be silly— he's a Great Dane with a degree from Harvard Medical School, that's who.

And they pour it on the kids — who pour hot lava on the parents unless they have those gadgets and gimmicks. There's Captain Kangaroo (who the hell ever heard of a military kangaroo?) and Soupy Sales—(and sales is right)— and Sheriff Joe, John, Alex, Norbert and all kinds of deputies. Just when we get rid of the Lone Ranger and Jack Armstrong, the All-American Senior Citizen, they dream up a whole new tribe of pitchmen on TV.

The pitchmen are sometimes downright nauseating. Take that well-known finance company, where the guy comes on like this. "Friends—do you need money?"

There's a nice guy — he makes a thousand bucks a week, but he worries about me! Do I need money? If I do, and I ain't got it—this guy is gonna have ulcers. So he tells me "Friends, if you need money, don't borrow from a friend, because if you borrow from a friend—you lose a friend. Borrow from Sickening-Sweet Finance Company, because we guarantee— YOU'LL NEVER LOSE US! Just step in your nearest convenient whipping post, and bring along your wife or kids—for collateral— or your right arm."

Everybody that manufactures or grows anything advertises on TV—and they get the sexiest or most known people from the world of entertainment to do the pitch for them. "Friends or countrymen?" one guy says. "Do you suffer from amelioration, castigation,

CONTINUED ON PAGE 5

POOR COPY BLURRED PAGES

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E-54

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Sheila Wassermann is a direct decendant of the famous August von Wassermann, the German physician and bacteriologist. And like her forefather, Sheila has a great interest in things medical.

During her school years Sheila took such courses as cytology, histology, biology and anatomy. In fact, every one of her teachers was convinced that she would enter the field of medicine. But as it turned out they were wrong. Rather than work with such mundane things as microscopes and slides Sheila decided that

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...she'd sooner work with people. Thus Miss Wasser-...n went into the used car business. As far as we ...w she's the only woman to hustle used cars.

...Since she likes people so much Sheila will bend ...backwards to make a customer happy. We think ...'s darn nice of her. Especially when you consider ...hard it is for her to bend over at all. She first ...it into her head to enter the auto action some ...years ago. Miss Wasserman flunked her examin-...n to obtain a dealers license three times before ...ging to pass. Such failure might discourage a ...determined individual, but not Sheila. She went ...to the DMV repeatedly to take the test. After ...second time the officials advised her to forget the whole thing. But sheila kept going down and it paid off for her. On the third try she reached the climax of her efforts—They awarded her the license.

Her ability to sell cars is demonstrated by her sales slogan. "Make The Wassermann Test." And people did, by the droves. Her test consisted of the customer yanking out the dip stick of a used model and putting a drop of oil on a slide. Then the customer was asked to view the sample under a microscope. Her theory was that you could tell a lot about the condition of a car by examining the oil closely. We don't know how accurate this test is; but she's sold a lot of cars and she's pulled a lot of dip sticks for prospective customers.

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CANDID'S

For your edification and scholastic betterment we offer the following examination in ord that you might be able to determine your individual prowess in the field of heterosexual behavio Dr. Ian Pervertsenberg, A.B., M.A., PhD, and Doctor of Lycanthropy, Holding The Chair Of D viate Research at the University of Pico Rivera, has designed this test for exclusive use by Nig and Day. Turn upside down for correct answers.

1. AN ORGASM IS (a) Illegal, (b) A Disease, (c) A Foreign Car.
2. HOMOSEXUALS ARE (a) Democrats, (b) Republicans, (c) Other
3. PORNOGRAPHY MEANS (a) A Sickness (b) Money, (c) Fornication Without Representatio
4. DR. FREUD IS (a) A Dirty Old Man, (b) A Dirty Young Man, (c) A Girl
5. A MAMMILLATE IS (a) A Bird (b) A Plane (c) Super Mother
6. SODOMY IS (a) Wholesome, (b) A Philosophy, (c) A Near Miss
7. AN ORGY IS (a) A Monster, (b) An Editor, (c) A Hollywood Party.
8. ENTER MY SUBSCRIPTION FOR (a) Life, (b) 10 Years (c) Five Years

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SEX QUIZ

Herbenberg has given the following scoring table so that you may hate yourself. If you answered all eight ons correctly then you are INSANE. If you answered seven of the questions correctly then you are INANE. If nswered between one and five questions correctly then you are STUPID. If you missed all the questions save r eight then you are INTELLIGENT. If you missed all the questions then you are ILLITERATE.

ANSWERS:

(1) a. A foreign car called the Orgasm Six which features a stick shift gear-box and fuel injection.
(2) c. Others. That's the problem.
(3) c. Feminism without representation.
(4) c. A girl. His daughter who is continuing her father's work.
(5) c. Super Mother.
(6) c. A Near Miss.
(7) c. A Hollywood Party.
(8) a. Life. Don't be a cheapskate!

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Rubber Bras & Stockings
Rubber Girdles & Corselets
Rubber Slips & Chemises
Rubber Undershirts & Shorts
Rubber Dresses, Skirts & Blouses
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JILL in Gum Rubber Suit	2.00 ( )
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CONTINUED FROM PAGE 32

ted his teeth. Alcazar sat with the same cruel smile playing over his lips.

When he was finished, the others raised their glasses in admiration. No one spoke for a minute. Carey was perspiring.

"Dot vas goot," Gruenig gritted tightly.

"You actually watched the plane crash to the ground, you say?" Levy asked. "Extraordinary. Eight-five people in a single brilliant stroke."

"The twin girls, Carey," Felix cried. "That was a master blow. One watching while you did it to the other, then the other . . . ah, quite nice, quite nice, Mister Carey."

"But the way he finally dispatched them!" exclaimed Redmond. "Where did you learn that trick, most esteemed friend?"

Carey laughed. "Oh, the ice picks with strips of fox tail tied to their hilts, you mean? Ah, from the Eskimoes, Mr. Redmond. They use fox tails on their spears. It irritates an open wound to beat hell!"

Was that a flash of displeasure that crossed Alcazar's face? Carey couldn't be sure, because the man spoke:

"Do you always . . ." he began.

"Kill them?"

"Yes. That's what I mean."

"No. I enjoy the erotic thrill of giving pain, but I do not particularly get a kick out of killing 1 or 2 people. In the case of the girls—they were but 23 you know—it was a matter of not wanting to go to prison. I'm sure you understand . . ."

"Yes," said Alcazar. "It doesn't matter. I was merely curious. But come, we would like to present our surprise to you.

Carey was puzzled. "Surprise?"

"Surely, you don't think we welcome our new members just in this way. We have what we think will be a most pleasant evening in store for you, Mr. Carey. Tell him Michael," he said to Redmond.

"Quite," the Britisher said. "There is a small house out back, what the natives here call a *nipa* hut. We brought a girl for you."

"Why, that's wonderful!" Carey said, his voice full of genuine emotion. "May I?" he asked.

"We will wait for you. Enjoy yourself. Do not worry about her screams. We are quite isolated here in the jungle." Alcazar assured him. "You will find all you need outside the door of the *nipa*."

• • • • • •

It was as he said. Carey chose a quirt. It was a short whip with three

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Rush name of birthday you can see by my pictures in all normal dress to friends. See this ad? If you're over 21, send it back to me with just $2 for my regular $3 set of pictures. I know you'll enjoy them. But if you're over 21, send

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Super-Spy Lets You 'See Through' Walls, Fences and Locked Doors!

Secret of Private Detectives and Industrial Spies Revealed!

A remarkable optical device [illegible] side of a cigarette case makes it possible for you to see without being seen. People who relax [illegible] have no way of knowing that you can see [illegible]

Super-Spy allows you to secretly observe every action—while you stay safely hidden. Operation of the tiny device, a client, almost impossible to detect. The eyeball is [illegible] than the head of a pin!

If you drilled a hole that size through a wall, fence or door, you'd see very little. But Super-Spy's unique [illegible] called X-Ray Lens, adapts your field of vision. Wire X-Pupil, also, so that no moving about a room can escape your Super-Spy's sight! It all gives you a new [illegible] of Super-Spy's powers! But the real surprise is the price: $3.00!

Unlimited Uses:
Super-Spy's uses are limited only by your imagination:

Bedroom—Keep an eye on the kids while they take their naps, even if the door is closed!

Bathroom—Avoid the embarrassment of barging in while [illegible] occupied!

Super-Spy can penetrate a 4-inch-thick wall in your home, office, or factory. The lightest fence or thickest door can't stop you from observing—without being observed!

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If it's fascinating or profitable for you to know what people do when they don't know they are being watched . . . get Super-Spy!
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Please RUSH! I enclose extra 50c ☐

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CONTINUED FROM PAGE 16

thing." She alternately caressed and bit as he gave her his total being – Their flaming loins gyrated as his bursting potency made them one. Simultaneously, they experienced ecstacy sweeping through their tingling bodies, searing on their passions an unforgetable moment of love.

As their emotions subsided, they lay fondling each other, gently kissing and playing while the plane soared on through the sky toward San Francisco. Rod wanted to turn it around, for arrival at their destination would put Kitty in the arms of another man, and he was beginning to like her a lot—a hell of a lot.

The clouds obscured the ground, but the instruments told Rod they were nearing Frisco airport. They'd better make themselves presentable. Unwillingly, they pulled on their clothes and she combed her hair. Rod warned the radio up and tuned to the airport frequency.

"San Francisco tower — this is Beech Bonanza NR24773A. Over."

"Tower to Beech – go ahead. Over."

"Beech to tower — request landing instructions . . . "

The ceiling was low. The tower gave Rod his exact position and guided him into the flight pattern. The plane broke through the clouds at four hundred feet and touched down perfectly. Rod taxied to the loading area as Kitty looked for her fiance.

"There he is," she said pointing to a gray-haired obese man in his sixties.

"That?" asked Rod in amazement.

"He's worth millions, honey." She stroked Rod's thigh. "But don't worry about him. I like flying!"

As the plane stopped, Kitty jumped out on the wing. "Hi Georgie!" she shouted, waving at her fiance. She leaped to the ground and ran to give him a big kiss on the cheek. Rod killed the engine and strolled over.

"Georgie Hansen," said Kitty. I want you to meet Rod Swazey. He's the best pilot in the world, and you owe him two hundred and fifty buckaroos."

Georgie and Rod cordially shook hands.

"Two fifty. Huh?" said Georgie pulling out an enormous wad. "Here. Take five hundred. That's for getting my sweetheart through the fog without a scratch."

"Appreciate that," Rod mumbled.

"That's all right, son. We'll give you a buzz whenever we need you."

Rod shoved the green in his pocket and ambled nonchalantly back to his plane. Judging by the guy's looks, she'd need Rod a lot — a hell of a lot.

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Johnson, Dept. A, P.O. Box 1134, Reading, Penna. 19603.

THE 1 MASKED MARVEL RIDES AGAIN
1 in an army that nobody [illegible] has photos, too many
SEND YOUR BUCK AND GET THE LOW DOWN ON ME.
Write M M Box 1609 Hollywood, Calif. 90028

YOUNG ENGLISH GIRL
wants to hear from any gentleman interested in obtaining photos, slides, negs or films of an unusual nature. Send no money, just write to Studio Nine, 41 Beak St., London, W.1., England.

NUDIST MOVIES $2.00 EACH THREE DIFFERENT FILMS $5.00
EMPIRE PRODUCTIONS, DEPT. 66 BOX 27041 HOLLYWOOD, CALIFORNIA 90027

Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

CONTINUED FROM PAGE 44

at five different colleges believed all sports to be rigged, while another 11 per cent believed that "point shaving" was done all the time. Some of these admitted that they had been let in on the deals, in order that they could get a few dollars down.

Then, for the male college student, there is another sword of Damocles hanging over his head — two years of his life must be given to the military service, upon graduation — or flunk-out. He has developed an attitude of "What the hell — it's later than we think. So one part of my life — the sex part, I'm going to live my way, and in my own time."

He envies his friends who are married for their sex experiences, but he's damned if he'll get married just for that, because many of his fellow students (females) feel exactly the same way, and there is nothing to prohibit free sexual experience almost at random, except campus rules, and the ear is the answer to that.

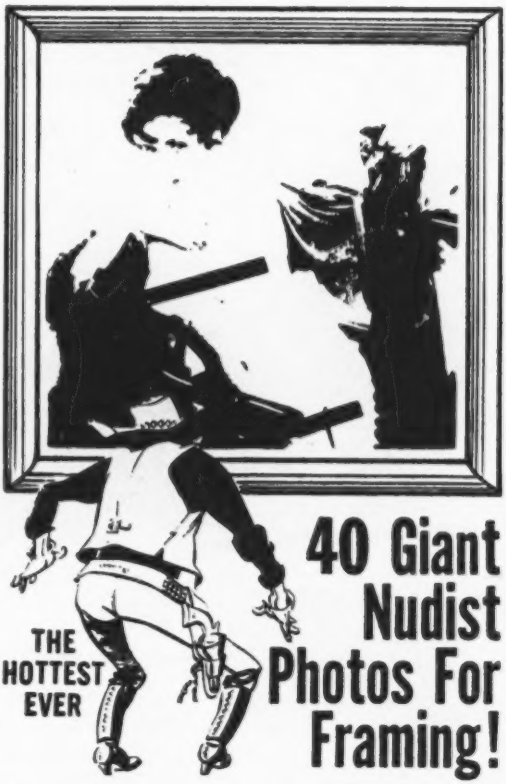
Then, students have lost respect for their instructors — and this is our fault. We have neglected the teachers of our land shamefully, in salary raises. Now, the average student can look forward to a beginning salary of about $12,000 upward, and he figures that anyone who slaves away their life before a blackboard, for $6,000 or so a year, can't be too good, so why listen to him, or respect him at all?

The college-age male is at the peak of his sexual drive and ability, and he is surrounded by many things that arouse and fire that desire. Most important, he is in close contact with females who share his cynicism, and new code of morals.

She knows that only "squares" aim at virginity. She has sound medical devices to keep her from becoming pregnant. She does not need sentiment with her sex. It's all part of "growing up," or of a liberal education. One 19-year-old said: "my wedding night will be a pagan ritual commemorating all my earlier experimentation."

It seems, from the replies given on surveys, that there is little regulation of sex activities, either by the schools, parents, or by the students themselves. Today, there need be no fear of getting caught, for society no longer looks down on unwed mothers, and the school is only interested in what actually takes place on the hallowed grounds of the institution.

It seems the lid is off — on sex activities, cheating, hooliganism, disobedience, and the one rule that applies is "Just don't get caught or chicken out."



THE HOTTEST EVER

40 Giant Nudist Photos For Framing!

Guaranteed . . . the most exciting girls you've ever seen; stripped bare and ready to please you. Sexy, giant size, full color photos, uncensored and unabashed, ready to frame and boldly display in bar, club or den . . . or just add this magnificent portfolio of nude titillation as the prize of your collection. The bargain of a lifetime—40, all different, 20 measure a full 13"x 20" each, 20 measure 11"x 16" each—all 40 at the fantastic bargain price of only . . . $2.00

Your money back if not delighted. Rush $2 to: PARIS IMPORTS, 6311 Yucca St., Dept. 3648 Hollywood, California 90028.

COPY BOUND CLOSE IN CENTER

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Candid, Issue No. 8, held not obscene in
Carlos v. *New York*, 396 U.S. 119 (1969)

CANDID *Corner*

"THE GIRL NEXT DOOR" PHOTO CONTEST.

"The Girl Next Door" Photo Contest"

Amateur photographers — models — readers:

You can win money, fame and the opportunity to compete with professionals if your picture is selected by our readers as a girl they would most like to have as "the girl next door." This is a continuing contest in each issue of *Candid*. Any girl who receives fan mail sufficient to warrant a reappearance will be featured in a big photo layout in a later issue. In addition, the submitting photographer will be assigned to photograph the winner at regular professional rates.

All entries should be addressed to *Candid* Corner, 10539 Burbank Boulevard, North Hollywood, California.

Send one or two glossy snapshots, no smaller than 3 by 5 inches. All photos must be accompanied by a valid release, and a standard release form is provided on another page. Entries become the property of *Candid*, and none will be returned.

Remember, if your entry does not win you an assignment, at least you will have the pleasure of seeing your favorite sweetheart's photo published in a national magazine.

Hurry! Enter your favorite pin-up now!

PHOTOGRAPHERS:

Since all entries to CANDID'S "Girl Next Door" Contest must be accompanied by a valid release, we have provided a standard release form for your convenience. The model need not sign her real name. She may sign a suitable professional name, just as a writer may sign a pen nam

PHOTOGRAPHIC MODEL RELEASE

Date _____

I hereby authorize and give full consent to (photographer)

_____, his successors and assigns, to copyright, publish and display all photographs taken by him/her on the above date in which I appear. It is further agreed that he she may use, or cause to be used, my photographs for any and all exhibitions, public displays, publications, commercial art and advertising purposes, without limitation or reservation or any compensation other than receipt of which is hereby acknowledged. In signing, I also certify (under penalty of law) that I am at least eighteen (18) years of age.

Model's Signature _____

Address _____

PHOTOGRAPHER'S ENDORSEMENT: I hereby assign the above described photographs to Sari Publishing Co., Inc. and in signing, certify that I know the model therein and above-signed to be at least eighteen (18) years of age.

Photographer's Signature _____

Address _____

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Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

All the way from South Korea comes these pictures of the lovely Kim Chong-lit. Of course the photographer is in the service. The photographs are great and so is the girl, only we'd like to see more of her.

These pictures come to us from Hyattsville, Maryland. The photographer, bless his soul, was so taken with his model, Miss Nancy Edwards, that he sent in two pictures. It's too bad he didn't send us Nancy.

Dianne Marlowe comes from Grand Haven, Michigan. At least that's what she says. The pictures look as though they were taken at a beach in the tropics. One thing's for sure — Dianne didn't get that tan in Grand Haven. Too bad Dianne didn't wear a topless swim suit when she got the tan.

COPY BOUND CLOSE IN CENTER

Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

CONFIDENTIALLY YOURS

THE MODERN CORRESPONDENCE CLUB

Ads in "Confidentially Yours" cost 20 cents per word. Included in the paid words must be the city or state in which you live; also count two words for the box number. Your ad will appear simultaneously in as many as eight magazines. Your ad may be used only for the purposes of gaining correspondence, friendship, romance, etc. No product or service may be offered for sale. We reserve the right to edit copy or to refuse any ad which is suggestive or immoral. Print or type your ad on a clean sheet of paper and send it, along with payment, to Ad Reply Service, P.O. Box 505, Van Nuys, Calif. 91408.

NEW ENGLAND couple seek to correspond with and meet young, single girls or couples. Send frank letter, photo. Mass. Box F-1.

LOS ANGELES marrieds, attractive, early 30s, modern ideas, interests. White, clean, healthy, sincere, discreet. Wish to meet other couples desiring fun-loving meetings. No children, so free to travel. Photo, phone please. Box F-2.

ATTRACTIVE 30-year-old couple wish initiation into modern friendship. Santa Clara, Calif. Photo appreciated. Box F-5.

SEATTLE, WASH. — White male, 40, wishes to meet couples, single or married women for dates. Discreet. Phone, photo. Box F-6.

MIDWEST MAN, 38, overseas worker, wishes to correspond with fun-minded people under 40. Now Stateside, but leaving soon. Box F-7.

BLONDE HOUSEWIFE, 39-26-37, husband and I wish to exchange home photos and experiences with modern couples and gals. Box F-11.

NEAT, REFINED, responsible Indiana couple, 50, not concerned about form or looks, wish friendship with white couple. Polaroid photos, exchange ideas, meet. Box F-12.

ILLINOIS YOUNG ARTIST couple to exchange gay and imaginative interest in pictures with all. Frank letter, photo, will assure answer. Box F-14.

SOUTHERN CALIF. couple wish to meet other guys and gals for fun and small parties. Interested in polaroid photography and sunbathing. Frank letter, photo, phone please. Box F-17.

NO. CAROLINA gentleman, 22, desires correspondence with ladies 18-45. Object, happiness & marriage. Box F-19.

LADIES FREE

Ladies seeking correspondence, friendship, romance, marriage, may advertise free of charge in "Confidentially Yours," up to a maximum of 20 words. Any words in excess of the free 20 words must be paid at the rate of 20 cents each. Send copy as directed above; just leave out the payment.

NEED GOOD MAN — Widow, 31, affectionate, home loving, 3 kids, wants a man, 35-45, who loves kids & has decent job. Ft. Worth, Tex. Box E-24.

BROADMINDED COUPLE, central N. Y., wish to correspond with other couples & singles with interest in home photography dealing with the unusual & off-beat. Photo, please. Box E-26.

RED HEAD, 21, 5'5", 120 lbs., would like to meet other girls and couples for good times. I'm broadminded and enjoy being in the company of other girls and couples. Please write and send a photo. Will answer all mail. Columbus, Ohio. Box E-27.

COLUMBUS, OHIO, female artist, 25, wishes to contact couples and other single girls for exciting times. Box F-39.

CHICAGO BRUNETTE, white, 30, tall, shapely showgirl, educated, desires to meet other uninhibited girls, couples. Unprejudiced. Exchange photos. Box F-40.

TEXAS LADY wishes correspondence with ladies and couples to explore foreign cultures. All with photos answered. Box F-43.

HOUSTON GIRL, 23, desires correspondence with other women. Be frank, state interests and enclose photo. Box F-44.

JUST LONELY — White woman, 46, wants love & companionship from nice guy, maybe marry. Mansfield, Ohio. Box F-45.

SO. CAROLINA GAL, 24, liberal, lonely attractive, desires female correspondence, exchange experiences. State interests; be frank. All answered. Box F-47.

NEW YORK COUPLE, very broadminded, seek new swinging friends. Frank letter, photo, please. Box F-48.

BROADMINDED COUPLE, he 26, she 20, wish snapshot trades and exchange of idea. Photo a must. So. Calif. Box F-52.

WHITE, DEPENDABLE retired man wants dominant, attractive looking lady any race up to 45. Her wish is my confidential command. Detroit area only. Box F-54.

NOVICE MICHIGAN couple wish frank correspondence and exchange of amateur photos. Speedy reply. Box F-55.

CLEVELAND CALLING — Broadminded wife seeks virile gentleman with good physique for modeling. No prejudices. Phone and photo, please. Box F-56.

LOS ANGELES — Modern, attractive couple, he 6'2", professional, she 5'2", terrific. Warm, immediate reply. Photo, phone please. Box F-57.

HOW TO REPLY

To correspond with one of the persons whose ads appear on this page, place your letter in a personal-size envelope and seal it. On the outside, print the box number of the ad to which you are replying. Put the envelope inside a larger one, along with one dollar ($1) in cash, check or money order to cover postage and handling, and send it to:

AD REPLY SERVICE, DEPT. 2
P.O. Box 505
VAN NUYS, CALIF. 91408

Your letter will be forwarded, unopened, to the person who placed the ad.

PENNSYLVANIA — Young, broadminded couple wish to exchange photos and letters with same. Send best photo first reply. Harrisburg. Box F-20.

ATTRACTIVE BLONDE, 21, blue-eyed, mother of three, looking for kind, sincere man with security. White. Box F-22.

L.A. COUPLE, late 20s, warm and friendly, wish to meet other moderns. Will exchange polaroid photos and phone. Visitors to L.A. welcomed. Box F-23.

COLORED WOMAN, 37, 130 lbs., good figure, broadminded, wants a non-drinking man over 50. Shreveport, La. Box F-26.

FUN LOVING Yonkers (NY) couple, late 20s, wish to meet, correspond with equally broadminded couples interested in adult pastimes, polaroid photography. Enclose photo, please. Box F-27.

TOUGH GAL wants to correspond with, meet passive, submissive man under 40 prepared to live under strict discipline. Object marriage. New York City. Box F-29.

MASS. MISS, 28, attractive, former dancer, interested in polaroid photography and modern friendships. Entire New England area. Box F-31.

ATTRACTIVE NURSE, 42, 126 lbs., 5'7", likes good clean fun, wants to correspond with, meet man own age. Good cook, will treat him nice. Cleveland, Ohio. Box F-32.

VERSATILE LADY, seeks correspondence with broadminded and sophisticated man and women or couples with mature adult interests and pursuits. All frank letters answered. Washington, D.C. Box F-33.

NEW JERSEY — Young, handsome bachelor, well-to-do, 24, seeking friendship with attractive female, 18-25. Snapshot. Box F-34.

NYC GIRL, warm, attractive, white, desires modern female and male friends. Phone, photo, if possible. Answer all. Box F-36.

BROADMINDED COUPLE seeking interesting friends. Photo please. Penna. Box F-37.

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CONTINUED FROM PAGE 32

Ardruff, too many wives, not enough sex, or just plain cancer?" Then he ads (to faint organ music in the background) "Do you feel like you'd just like to lay down and die? Well, friends, if you do, try an Eversleep Casket. We guarantee that once you've croaked out in an Eversleep, you'll never want to get up again. And don't forget, friends, we have a lay-away plan, and the family budget plan-even a giant, economy size for you big shots!"

There's even an outfit that manufactures plastic icons, and religious symbols. You turn on your car radio and what do you hear? "I don't care if it rains or freezes, long as I've got my plastic Jesus, plastered on the dashboard of my car———"

Have you ever stopped to wonder why some of the greatest stars of stage and screen and TV lend their voices and their glamorpusses to such pitches, for everything from sink cleaners to soda pop? I'll tell you why— RESIDUALS.

You probably think that residuals is something like the Mississippi Delta, -something left over after a flood. Or maybe the ring around the bathtub (the god of commercial detergents forbid!) Well, it isn't. Residuals is a dirty word (to sponsors and ad agencies, anyhow), that means they just go on and on, and on, and on— laying out the paycheck.

Maybe the toothpaste commercials are the most ridiculous and nauseating of all. Like that one where the girl comes running in, all healthy and homely-looking, and hollars: "Look, Ma—no cavities. I'm pregnant as hell, but I haven't got a cavity. In fact, my claws had 38 per cent more pregnancies, because we used No-Cal birth control pills."

If they can't get you with the "natural bit," they turn to comedy. A guy walks up to another character who is minding his own business, and this first guy (in a Hawaiian shirt) is humming away in a manner that lulls the second guy into acceptance—(that's a scientific, psychological marketing term) – and all of a sudden, he pops this guy in the kisser and knocks him cold. While he's doing this, he is wearing a loud Hawaiian shirt, and he says to the guy he's cold-cocked: "How'd you like a nice Hawaiian punch?" And then say movies and comic books are loaded with violence.

The last commercial, incidentally, could easily be converted to obtain troubles or karate lessons, without changing a line.

No one is immune to money—especially when you only have to work for, say, one hour, under those hot lights—and the paychecks keep pouring in for years. Take a series like "Dragnet," with Jack Webb and Ben Alexander. That's been around ten or twelve times, with a different sponsor ranging from cigarettes that walk by themselves and sing (oh, they get paid too!) to cemeteries, with a pay-as-you-go plan. It has been re-run under different titles, like "Badge 714," "Just The Facts, Ma'am," "I missed you last time, bud, but I'll get you Friday," "Son of Friday," "Smith and Friday meet Saturday's Children," and "Joe Friday Meets Tuesday Weld. –But Never On Sunday."

Most of the "name" stars today follow the reverse order of another famous series that is still making the round. They just agree to go into a TV studio and pose, and mouth words about some soap or shave cream, and then sit back and tell the world: "HAVE COMMERCIAL–WON'T TRAVEL."

Because they don't have to. Walk up to a Hollywood star these days and ask for their autograph, and what do you get? A box of detergent, (sample size) marked: SAMPLE. NOT TO BE SOLD BY LORETTA YOUNG OR HER AGENT.

And the gimmicks they have. I thought for years that Loretta Young was selling stockings or ladies panties, the way she swirled into a room–and my buddy thought she was selling diners.

And they get you, no matter what your favorite type program is, or where you live, or what time you watch TV. On these all-day, all-night programs, like Today, Tonight, Noon, The Edge of Darkness, Twilight Zone – (see, you can't be missed)–they have what they call "the participating sponsor." What that means is, anyone who makes anything at all can advertise it cheaply on the show, because all they do is take a three minute entertainment break once each hour! Whenever you hear a star or announcer say, ". . . and now a word from our sponsor," you can go out and read the first two volumes of the Encyclopedia Britannica, and during a station break, learn the Illiad or Odyssy.

But long as they keep on paying stars and singers next week, or next year–over and over again–for work they've done yesterday or five years ago–we'll have to live with it, or else go along with "Pay TV." And with the caliber of prize fights and ball games today–we'll have to take that up in another article.

Important TO MEN!

If you, like many other virile men, cannot "wait" for your wife—if your sexual climax comes too soon, leaving her unhappy, unsatisfied and frustrated—then you should try Culminal®.

This remarkable cream is not a remedy for any organic or psychiatric disorders. It is especially and exclusively an aid in the relief of premature ejaculation due to intense eagerness, excitement and penial sensitivity of sexually potent men who are physically, mentally and emotionally healthy and normal. By soothing this supersensitivity Culminal can help

✓ DELAY CLIMAX
✓ PROLONG UNION
✓ SATISFY WIFE

Your ability to delay your climax—your unhurried, lingering love making—can give your wife time to reach the exhilarating peak of mutual ecstasy with you.

With the successful use of Culminal, sexual relations need no longer leave her last-down, disappointed and under nervous tension. Instead you may anticipate repeated responses followed by indescribable joys of utter satisfaction and contentment.

Indeed, by giving her such gratifying sexual experiences, you can greatly excite her desire for more frequent pleasures in relations with you.

1. Culminal is easy to use and acts fast. You simply apply it to the penis, remove any excess cream after 5 to 10 minutes, and are ready to proceed.
2. Full directions are on the label wrapped around the tube. They are short, clear, easy to follow.
3. Culminal has been medically tested and is so safe, you can get it without prescription. We urge you, however, to discuss it and premature ejaculation fully with your doctor and avoid violence has required for prolonged periods.
4. Culminal will not affect your ability to experience erections, diminish the intensity of your climax or impair your virility.
5. Culminal does not decrease the wife's sensations since all remaining cream is removed before going to bed for sex. In fact, it can aid her to achieve mutual orgasms by helping the man delay his climax.
6. Culminal can prolong the pleasure of the married act for both you and your wife.
7. Nobody besides you and your lover knows that you are using Culminal, not even your wife—but she will surely appreciate the results.

Think what a blessing Culminal could be to a wife who seldom knows the joy of orgasmic heavens of her husband's early climax! Think what a blessing it is to the husband, to be able to satisfy his wife's affection and gratitude and to have her eagerly welcome his caresses with open arms!

Try Culminal At Our Risk

Try a tube of Culminal, ample for 30 applications, at the direct-by-mail price of only $3 post, including postage. Or order it COD and pay postman $3 plus postage and fees for the benefits you have by this offer!

See for yourself if Culminal is not everything we say it is. Use it just once or twice, but as every opening until you have used your entire tube, even if it lasts a year.

You must fully enjoy the benefits of Culminal—you must be completely satisfied or your money back, or simply return within a year the sealing label (in above proof of purchase) of the last in which you receive your Culminal and your purchase price will be refunded without quibble, question or red tape.

So don't let a premature climax cheat you of the sexual joys you and your wife deserve. Order Now!

Culminal, Inc. Lock Box 0, Main Office, Union City, N. J. 07087

RUSH COUPON NOW

Culminal, Inc., Lock Box 0, Main Office
Union City, N. J. 07087

Send 1 tube of Culminal, ample for 30 applications, in plain wrapper. I understand I may return the tube within a year for full purchase price refund if I am not satisfied.

☐ Send COD ($3.00 plus) I'll pay postman $3 price plus postage and fee for handling on arrival.
☐ I enclose $3 in cash, check or M. O. Send postpaid.

Name _____

Address _____

City & State _____

COPY BOUND CLOSE IN CENTER

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she did everything including the frug and the duck

CAN YOU DO A LITTLE BIT OF THE JERK?

Vicki Dixon is right in step modern times. Although she's not a teenager she is young enough to appreciate the music and dances of the youthful set. During our picture taking session, Vicki amazed us with her dancing. Within fifteen minutes after our arrival she'd frugged twisted and jerked for us. After twenty minutes she'd covered the swim and watusi as well as the fish and the duck. Anyone with the least bit of knowledge of these dances would readily admit that to be able to do all seven of them without any hesitation is quite an accomplishment. Most teenagers are lucky if they can do the frug and the duck and maybe a little bit of the jerk.

A few years ago Vicki was a folk music nut. She went the whole route: Coffee houses, shades, and frowzy clothing. She even learned

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***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

to play the mandolin. But when the folk craze was edged out by the 'Swinging Generation" Vicki was faced with social oblivana. Swinging Dixon, as her friends call her, said that she didn't really experience too much difficulty in learning the dances and the new language. What threw her for a time was being able to stomach the hair cuts that the new idols were sporting. "The folk singers," she said "may have had long hair, but you could still tell the boys from the girls." Vicki hopes that this latest fad won't last too long. She's a bit anxious to move on to the next big scene.

We asked her if she believed she could fit in with what ever is coming next. She said; "sure, with a body like mine how can I loose?" And you know what? She's right

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Candid, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)

COPY BOUND CLOSE IN CENTER

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***Candid*, Issue No. 8, held not obscene in *Carlos* v. *New York*, 396 U.S. 119 (1969)**

BIZARRE·BAZARR

F-1 BARE CHESTED HAIRPULLERS....Two healthy young girls strive for domination over each other....result....best wrestling film of this decade.

F-2 WRESTLING IN ROUGH. Sweet young thing bullied by Black Beauty.

200 ft. B&M B & W

$16.00 EACH TWO FOR $27.00

F-3 PAULINES PUNISHMENT....Office girl punished with severe Bondage, Beating and Spanking by Oriental room mate.

F-4 ERICA'S REVENGE....Step-sister Bound - Lashed - and Spanked by dominant female Sadist.

F-5 VOODOO SPANKING....POLYNESIAN BEAUTY puts frightened girl through Bondage—Spanking—whipping ordeal.

200ft. B&M B & W

$16 EACH - 3 FOR $40.00

F-6 TORTURED MALE MAID....Neophyte Male Maid introduced to Bondage by Dominant Female through Spanking & Humiliation.

F-7 DOMINATED MALE....Watch Sadism & Masochism in motion as a young attractive female makes her male slave submit to all her devious cruelties.

F-8 BURGLAR ..... BOUND & LASHED. ....Surprised male burglar caught & subjected to the most unique torture & spanking his intended victim can contrive.

200ft. B&M B & W

$20 EACH - ALL 3 FOR $50.00

F-9 THE MAD COUNT & HIS MAIDS

The mad count gives vent to his personality by forcing his maids to each other....then in a fit of canes, chains & whips then

200 ft B&M BLACK & WHITE

$25.00

B-1

B-2

B-3

B-7

BOOKS $3.95 EACH 3 FOR $10.00

BIG BOOK

ALL SEVEN BOOKS

B-4

B-5

B-6

TO: PRIMA BOOK & PUBLISHING
P.O. BOX 5381
SHERMAN OAKS, CALIFORNIA

ADULTS ONLY

PRINT:

Name _____ Age ____

Address _____

City & State _____

Enclosed Find $____ Cash ___ Check ___ M.O. ___

F-1 ☐	16.00	
F-2 ☐	16.00	
Both ☐	27.00	
F-3 ☐	16.00	
F-4 ☐	16.00	
F-5 ☐	16.00	
All 3 ☐	40.00	
F-6 ☐	20.00	
F-7 ☐	20.00	
F-8 ☐	20.00	
All 3 ☐	50.00	
F-9 ☐	25.00	

B-1 ☐
B-2 ☐
B-3 ☐
B-4 ☐
B-5 ☐
B-6 ☐

BOOKS $3.95 EACH OR 3 FOR $10.

B-7 ☐ $3.00

SPECIAL....ALL 7 BOOKS....$20.00

Esoteria

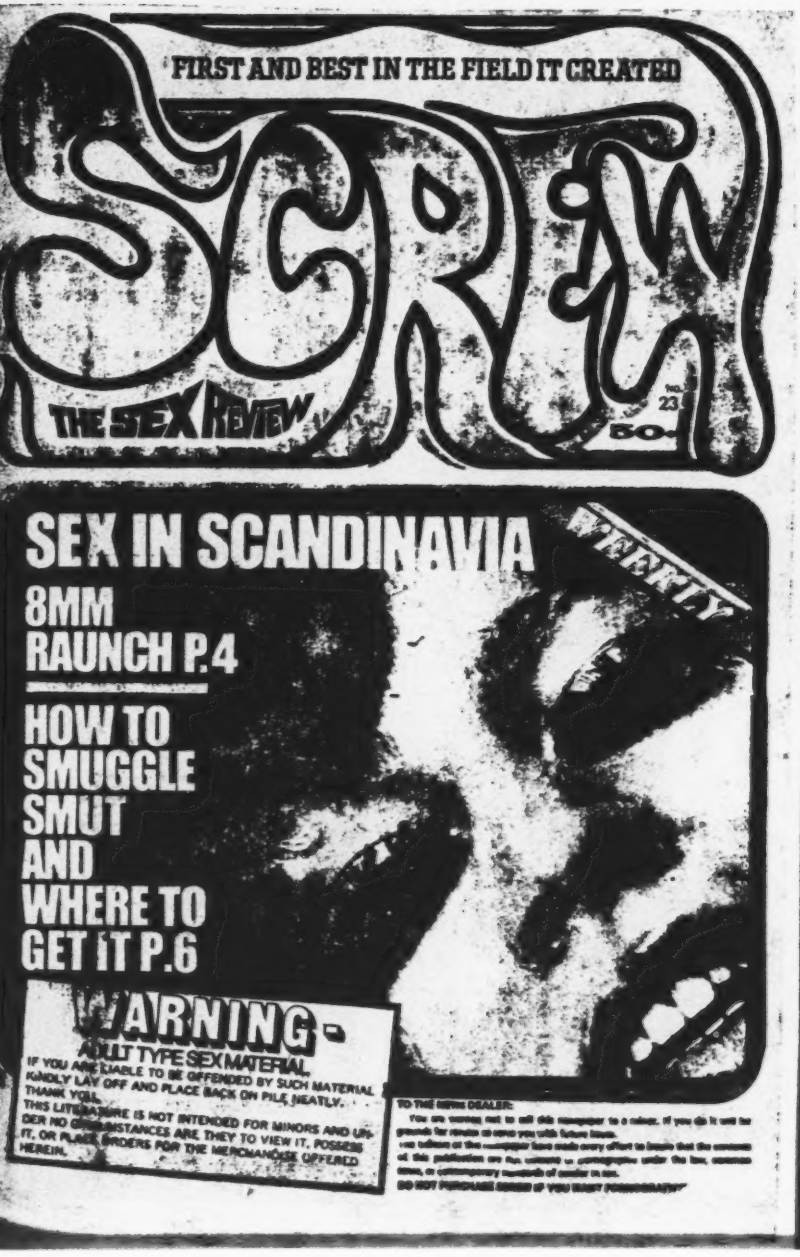
ESOTERIA
Personal ad: Photo
Stories, Illustrations. Gr
copy now. Don't miss it.
Sold separately $2.00

BONUS SPECIAL ALL 9 FILMS and 7 BOOKS – ONLY $150.00

APPENDIX F

Screw, Issue No. 23

Screw, Issue No. 23



SCREW YOU!

GOLDSTEIN MEMORIAL ISSUE

Every time we count on inordinate amount of space either in Buckley or [illegible] we get busted. We'll repay this and dedicate this issue to Al Goldstein.

[illegible] copy. No fun, five pages of painful polemics, plus his ugly mug in seven of the issues [illegible] he shot repeatedly for this second journal of Dynamite Literature.

SPECIAL ISSUE

This is the first time we've devoted an entire issue to one particular aspect of sexuality. We felt that with the thunderclaps and complete eradication of the [illegible] here in Sexadelphia everything was expected from us. The next issue of SCREW will contain the open account of garden [illegible]'s] and shows [illegible]'s] as [illegible] case. If you are afraid of SCREW becoming too intellectually stimulating, [illegible], Buckley never went to College and Goldstein is a dropout, so between the [illegible] of us you'll never have to worry about intelligence playing too large a role in these [illegible]. But Sexadelphia has everything to tell the blue balls and jerk-off queens who are tired of the rent they come out of, and it really hasn't been told. Most censors read SCREW three days, so maybe we'll get the third arrest to them in three years. In fact, [illegible]% of our audience is made up of Sunday rube court to put us away. They pick us up and read about the latest outpouring of vomit is doing to their black ass lives, which we get great moral chuckles, and then get the guilty-willies and call their [illegible], rabbi, Edmund, guru] and confess. Their enlisted manner in turn reads SCREW, gets [illegible] under the collar, spends, and then gets the D.A. The D.A. reads SCREW, gets excited, gives it back to his secretary, and calls the Police Chief. The Chief simultaneously hangs up on us when the fun is all about and tells his men to "make all efforts to [illegible] harass and annihilate this shame" (sadness hath!). By this time we have [illegible] bags out also gals and everyone is happy.

PEEK-A-BOO

ALEXANDER'S DEPARTMENT STORE at 59th St. & Lexington Ave. (CYD-2000) is currently running the greatest Peep Show in town. And it's free! All you have to be, apparently, is a Security Guard, or someone who's friendly with the Security Guards. This voyeuristic Department Store has cameras strategically placed directly overhead in at least two of their male/female dressing rooms. At the Valentino Shop across from Mr. Fish (on the same floor as the Tomorrow Shop) there are two fitting rooms. A sign outside warns you that it is under "electronic surveillance" and a glance above your head reveals a smoke camera, which, according to the Public Relations Department "runs continually." Eve Cary of the Civil Liberties Union says it's an "outrage" and Mr. Art Reilly, chief Security Officer of Alexander's denies he exhibitionist. But Flo Fallycone reads the trip upstairs and witnessed this travesty with his own very eyes.

Maybe there's an even greater show going on for the boys with a hidden camera in the Ladies' Bathroom?

Gentlemen, tried to submit an application for a job at Security Guard at Alexander's but at the mandatory mid they would never hire "perverts" like him. It's worth the try though, so if you're a pervert, exhibitionist, voyeur, garter fetish or panty fetishist, the place to go and apply for a job is: ALEXANDER'S DEPARTMENT STORE, Security Division, 59th St. & Lexington Ave., NYC, NY. Or call the VILLAGE VOICE at 924-7555, and congratulate Sandy, who obviously supports this practice, since she takes so much paid advertising from Alexander's and her principles forbid her from accepting ads if she doesn't approve of ALL the policies of her clients. Tell her Buckley and Goldstein give their regards.

SPECTATOR

Congratulations to Michael Steinberg of the Columbia Univ. SPECTATOR for writing the most forthright, insightful and generally superior article on SCREW and its creators. Look for the name of Michael Steinberg to appear next time at the bottom as a writer for the NATIONAL MIRROR, or maybe Gore's a future for him as a proofreader for the NEW YORK POST?

SHIRLEY LESS, a waiter for the MANHATTAN TRIBUNE, a New York Weekly, was seen pushing shit on the corner of 125th Street and Lenox Avenue in Harlem. According to our sources, when asked what she was doing there, she replied "Fuck you, buddy" and said another beg to a crippled pervert. We cannot testify to the accuracy of this report, but then again, the MANHATTAN TRIBUNE never checks their facts out either.

SCREW

Sexual Freedom Weekly

Yehiel Mishkin

[illegible] Ira Basley
Mike Pekin
Al Goldstein
Jim Buckley
Associate Editor Sandra Dawson
Art Director Mike Cherry Studio
Circulation Manager David Resnick
Typesetting Studio Markowski
Sales Director Sandra Jaworski
Contributing Editor Al Goldstein
Production Editor Sandra Schwartz
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Columnists: Lige and Josh, Michael Pekin, Mister PR, Michael Perkins, John Paul Hudson
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CONTRIBUTING Editors: Eberhardt von Haselnuss; Ms. Wanda Stuart; Hollo Bardenhelm
GREAT CATERERS: Mrs. Goldstein; GREAT SUPPLIES: Vito Spool, Printed by Sadie on SDS staff.

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THIS ISSUE:

F-3

Screw, Issue No. 23

8 mm RAUNCH

The Peekflim market is slow and unpredictable at best in America, but if you travel to Scandinavia you get the chance to peruse the offerings at leisure, with a total stranger stationed on the outside of each pornographic establishment—according to old-fashioned pornography standards—to entice you!), this Swedish-type shindig eye each other cautiously while the girls' families his dark, shut of the girls starts to entice him by stripping and ...many men both girls pull his pants down. Out from under a red-lacking slot pops the most unusual dong this movie has ever cared anyone. Half the shoot six inches but then the rod-rag sort of bends downwards. It was very long but somehow too crooked to be real. The ...chief dash goes down immediately and gives a ...(for the shoot) mid-job, causing a ...hand up and down along his shaft. From here ...plot-like aspect, though. He, by some miracle of ...is going down on the other partner, thus finding ...behind bender. Then follows a somewhat ...

...

...

Screw, Issue No. 23

FOREPLAY: SEX IN SCANDINAVIA

By Al Goldstein

There are five capital cities in the north, one for each country. Copenhagen is the biggest with a population in excess of one million people. Known as "the city of bicycles," it is a delight to tourists because of three splendid attractions: Tivoli, The Little Mermaid, and the King's Guards.

It has recently added a fourth that has brought it into the vortex of a controversy that has raged since man first reached out for women. That new tourist attraction is pornography and the drama of its availability is highlighted because it is now completely legal.

The Danes first moved to change their laws in 1964 when their Minister of Justice, the oldest member of the Cabinet, requested a re-examination of section 234 of the Criminal Code. A study that involved medical, psychiatric, sociological, and church experts followed. The results were so conclusive that pornography laws should be relaxed that in June 1967, Parliament voted 159 to 13 to repeal all prohibitions against written pornography.

That bold step was further reinforced on June 1, 1969, when Parliament voted again, this time by a 147 to 25 count, to permit the production and sale of pictorial pornography to anyone over 16. It also abolished all censorship for films for persons over 16. The new law took effect this July 1st and the next three pages of SCREW will detail what actually took place in Copenhagen when "hard-core" became available to all with the money and the chronological age to qualify.

By this action the Danes ripped down the hypocritical bars that surrounded the dirty-word-and-picture-business. Denmark became the first Western nation to rip off all restrictions on pornography for adults. This is only part of the continuing evolution of a more liberalized morality in Scandinavia. Denmark and Sweden have scrapped taboos, developed sex education, legalized homosexuality, made contraceptives available, and accepted premarital sex.

In legalizing pornography, the Danes do not necessarily approve porno, but feel that prohibition stimulates interest and that it is wiser to make porno more legitimate and thus less tantalizing. To bury sex through repression is far worse for society than the open policy of Scandinavia: nothing to rapidly succeeding evidence.

Sex crimes are dropping and the once legally available pornographic books that starkly depict fucking are losing sales. Let's look more closely at these facts, that if correct, seem to indicate the total fallaciousness of the laws in America.

The word pornographia comes from the Greek word meaning "writing about prostitutes." Today, it is virtually meaningless. The Supreme Court cannot define it, the courts of the land don't know what it is, and the lawyer, laymen and legislators are equally in the dark. In this jungle of over-definitions and heavy undertrash, one would think that the United States would adopt the same solution as Denmark - the total abolition of pornography ownership as it applies to adults.

Many of the reasons for this healthy climate in Denmark is its love of freedom. The Danes want freedom from the power of the government over their minds. They want to make their own choices. They refuse to accept the state as parent of the people. They want to live their own lives and have been brought up to believe that they can think for themselves.

The most powerful force in destroying the pornography laws was the report of the Danish Medical-Legal Council. It denied that pornography causes an increase in sex crimes, alters the direction of sexual desire, or uniformly changes attitudes towards sex by subjecting our life. This monumental report did not find that pornographic literature is harmful, and supported dropping criminal prosecution.

The Council's report has been born out by the results of first liberalizing and then completely dropping restrictive pornographic laws.

Sex crimes in Copenhagen have dropped 34% while other crime rates are increasing. This proves that pornography does not give rise to uncontrolled impulses or acts. Since this literature makes the outlet of masturbation easier, socially unacceptable crimes such as rape and child molestation are not resorted to by the neurotic and psychotic in the socio-economic system. Thus, pornography seems to give a relaxation to the pandora rather than stimulate uncontrolled impulses.

Sales of pornography have decreased according to the book publishers' association. With taboos lifted and the free publicity from police seizure eliminated, porno merchants have gone out of business and those remaining have been forced to cut prices and raise quality.

Since most pornography is anti-erotic, once the curious have been satiated, the market for this material shrinks into insignificance.

The greatest concern in the whole pornography question is the children. Once more according to the Medical-Legal Council, "It is inconceivable that erotic external influences such as pornography should be of any significance in the sexual development of children and adolescents . . . What's bad for young people is their parents' attitude that sex is dirty."

Many medical people hold that continuing sex and violence can be harmful to children. But constructive sex is natural and healthy for children. Lack of sex knowledge may cause very destructive anxiety to young people.

Psychologists in Denmark have also found that pornography can help tired marriages through inspiration and example and decrease the need for extramarital experimentation.

The results of legalizing pornography in Denmark are obvious. The next problem is whether America is mature enough to face up to a scientific solution to a very emotional question - that of legalizing ALL words and pictures for adults as the logical extension of and next step up the ladder to freedom. Time will tell.

CLINGING CUNTS AND

THOSE FUCKING DANES

Screw, Issue No. 23

FLASHING COCKS

...ures when compared to the women in Frankfurt. I got the best looking of the five teens on the street to come and school with the episode of a Cary Grant, "Arsenic Itself?" The class didn't turn her into a raging lust climax with her passionate, learned she sighed with freedom, "300 Kroner for one girl, 300 Kroners for two girls." I was taken aback since I didn't want to buy their services, only borrow them. I then tried the ugliest girl in the bunch, figuring the price might be less reasonable. She replied, "try another girl ...I'm busy." That was absurd because she had been on that corner for the past 25 minutes and hadn't done a damn thing. Knowing a rejection when I got one I decided to buy some of the famous hard core porno and would sell (see Richard Perkins this issue) them at 200 Kroner, a fair sum. Still, I could buy ten soft cell books and spend my enjoyment over a long period of time rather than an abridged day over a whore's snatch. With considerations made in that there was enough in the cash to debate.

The average sex book store in Copenhagen looks funny like the Times Square variety except they are lighter in mood and the feeling of excessive oppression that dogs most stops in a Manhattan structure is not present. The gayly colored wares are catalogued by straight and gay as in New York. In most cases the color stock is a girl, who is either found by her surroundings. The main difference though is the wares which are at SCREW rack could be shown to you. But living in the dark ages of the sexual revolutions in America we can only verbally paint the pictures of magnificent porn. There must be a God in heaven above if he could create such smooth moaning flesh and such unseen something all conditions, colors and types of participants.

Prices of the color stuff, 32 pages, all color, from stripping off clothing to showering and gushing sperm on the last page is 53 (20 Kroner). This is the new variety since the laws were abolished. Prior to the legalization the quality was almost as inferior as in the U.S. Ugly girls and guys and black and white photography. Now those older books, also 32 pages, sell for about 15 Kroner. I advise that the new color stuff is worth the extra charge.

My favorite store was Leo Madsen. He owns six stores in Copenhagen and they have extremely large selections. The prices in the stores seem to be the same in all the stores, though in my final day I was told that do as are many persons, book stores that sell "used" books, whenever that is. The sales pitch is probably that some repentant guy used his book only on Sundays and never came to them are really fine copies on the pages.

Other stores I purchased from and that I felt gave nice treatment and value were: CHAOS SEX, Vibromagade 170, 1655 Kobenhavn V and Venus Sex, Vibromagade 7. These stores were only five blocks from the more adapted stores.

All the stores sell sex products relative books, and exhibits with various accessories. I spent only $200 of SCREW's money on this shit and will give you helpful clues on smuggling your socks into this country and also rules to order by mail and the rules of discovery involved. SCREW is truly the Wall Street Journal of the hedonistic set.

As the following conversion will point out, women are allowed in these shops. But, if still true they you can buy the same high grade poison in the vending machines outside the sex stores or else go to any restaurant that sells newspapers and buy many pull-off guys. The advertise a of nipple more limited and you aren't bold as the wares before making the big purchase but at least the stuff is widely available. Titles such as "Fondling," "Hot Sex," and "High Grade Pornography in Color" are displayed. Interestingly, no eight year old kids are being raped on the streets like in sick and highly hypocritical America. (When will this country grow up and stop fearing sex?)

KING OF PORNOGRAPHY

I spent about 30 minutes with Leo Madsen, publisher of "Weekend," the widest vending magazine in the world, like a Berlin beer, almost 35, and well built with a beard and long dark hair. We spoke directly and through one of his editors. My objectives were to questioned about he offered me a job and I liked him.

He had been in the pornography business for about 15 years and owned six bookstores and employed 60 people in various sex enterprises. He does his own photography and owns several companies including Cinder Films and the Scandinavian Picture Company on Vester Farimsgade 6, Copenhagen. He will accept orders from SCREW readers, but $2 must be sent first for his catalogues. But SCREW must you and he will endorse many forthcoming pornographic features enjoyed SCREW very much, but recommend that more explicit and fit into various pornography since it determined the pleasure level needed to maintain a business. Loneliness he elaborated, is anti-erotic, and I tend to agree with him which is further reason to make our alleged "citizenship" even more ridiculous.

The King of Pornography felt that America will be in as free as Copenhagen in the next 15 years. I disagreed and told him he was much too pessimistic and that America will probably have abolished pornography laws for adults within the next five years in spite of the Nixon years.

He also said that quality improved in the porno business since legal since higher quality printers, photographers and models were available in the wake of the responsibility of the amendment made. Another reason to guess is, since quality is a reply in sex not underground-Alice law and Investigated Quality homes as compared with commercial stuff seems to be further evidence of that premise.

I asked Madsen about customers' wants and the trends in the sex. He said that customers were on the increase and more complex sexual customers while black and whites making it were on the decrease personally. I asked him if the evening in the girls rounds on the last page of the photo books were his idea and he told me that he found those pictures demanded (on post) but gave them to his customers since it proved that the guy really got satisfied quite.

His parting words to me were, "why return to America and get arrested again?" Truthfully, I still don't know why.

The day before the interview with Leo Madsen I had conducted a much more extensive interview of three

continued on page 8

CLINGING CUNTS AND CRASHING COCKS

[illegible] with the attempts of one of the local porno businessmen, Sidney expressing that I want to give his address if any SCREW readers want to order from his mail order operations. As with Madsen, aged 52, for a catalogue and my SCREW sent you to get some sample wrapping photos. Number 1, SCREW not those people in Denmark can be responsible if customs confiscates the post. I discussed this problem with the sex store people and they told me they are trying to establish a re-shipping point, in other words, the stuff would be mailed first to a different point and then mailed to you. This shows the Scandinavian from Customs will deem they are primarily shocked by a Scandinavian Underworld. Oral pornography may be in the envelope. Other porn found into from Studio Trading, p.o.b. 38, DK 2900 Hellerup, Denmark.

Tall and distinguished looking with a background in the oil field, Vilhelmsen, he had wanted for his present boss for several years and liked his job very much. He is married, has two children and was born in Denmark. In this interview, he's call him Pedersen. The interview took place on the dock of my hotel, The St. Petersburg, a Canadian boat docked in Copenhagen and a great hotel they ship pieces of only 24 for a considerable but small sum.

SCREW: How many porno bookstores/ shops are there in Copenhagen?

PEDERSEN: There are about 30 such piece of shops are in the inhabited area. Probably 25 of the shops are in the Skindgade area.

SCREW: Why do you like your job?

PEDERSEN: Well, I like meeting people and it's fun to study and learn about human nature in a job such as mine. Most people enter the shop certain many of their preoccupations. I also make good money. My salary is 600 Kroner per week (1969) plus a commission of about 3% that is based on a complicated chart that I don't think will interest you.

SCREW: You're right. But what do you think about pornography and in particular if it fail in your children's hands?

PEDERSEN: I have an old eight year old daughter, and they are just not interested in porno. I have many of the books around the house and if they want to look at the pictures out of curiosity I let them. I mean, it's really only curiosity and not interest. Why should I make them feel anything is wrong in sex, their bodies and knowing about it? My wife and I frolic in front of the children. We should we hide ourselves as though we are ashamed or want to hide the beauty of our bodies? Sex is the eating and drinking, so why put undue emphasis on it. I don't see in the dark, or in a closet as the children can't see me. When they are older I want explain (like Teddy) to the issues of the prostitutes, of sex, the taxation, and different positions. Nothing is wrong [illegible]

SCREW: Where do you get your films?

PEDERSEN: They are from through newspaper advertisements, by mail they have been getting so many girls who want to pose for these porno books that they currently cut the fee from 200 to 100 for four hours of taking pictures and they still have not enough girls. This are many times harder to get and they get paid the same as the girls.

SCREW: Can I give my readers any advice on how to get the great stuff through the mail?

PEDERSEN: They can order from any mail order business but it is a matter of luck getting them safely to the customer. We are trying to re-route them by way of Germany or England which is not closely scrutinized by the post office. Also we are trying to get bulk quantities into San Francisco by way of Danish ships and then filling our orders from inside the U.S. Tell your friends to be patient and try a test mailing.

SCREW: Thanks a lot and keep the old cock hard.

Prior to these two interviews I had gone to the Danish Tourist Board at 7 Bernstorffsvej and interviewed one of their officers, Leif Klopsch. He explained that many times American tourists complain to him that their children are being exposed to porno and "perhaps." He just explains that "Denmark is a free country." It makes him and their town furniture a re frightening an experience to an ninety people Erich Fromm made the same point many years earlier in his classic book "Escape From Freedom."

only black and white pictures. One of the strongest books shown a girl making love to a large contortion. He does it for 32 pages. I guess some people just have a thing for contortions. Some of the other strange turns of my customers are for pictures of hairy girls or girls with tattoos. The Swedish like young girls of about 12 though in Copenhagen they have to be over 15 to be photographed, so the young girl books must be imported by us.

SCREW: Has this stuff affected you personally?

PEDERSEN: When I first started working--pat. The first 14 days at this job I studied every page and book like it was the bible. Now I only count it to keep track of the stock, or to look inside to see what is selling this week. But, one thing has helped me and my wife very much and been like a sex revolution. That is the vibrator. Every man should teach his wife how to use it, as many more orgasms they are wonderful.

SCREW: The movies seem over-priced. Why?

PEDERSEN: I don't know why, or if they are expensive only that there are several qualities and the store you pay the better the color and the prettier the girls. You can buy 100 feet of 8mm color of the lowest grade for 175 Kroner and they are called Expo films. A better type film is called Climax (the type SCREW smuggled in) and the best quality is called Scandinavian colorfilm for 400 Kroner (about $75) for 100 feet.

SCREW: What kind of profit is there in pornography?

PEDERSEN: This can only be guessed at but Lee Modens for example sells 27,000 copies a week of his magazine *Weekend* for 20 Kroner. Plus his movies and other books. I think he must make well over $10,000 a week. They usually print about 30,000 copies of a 32 page porno book by offset printing. It could cost about 10,000 Kroner to produce and bring at about 40,000 Kroner or a profit of 20,000 Kroner. The really big profit goes to the store owner. For example the average porno book is sold to the distributor for an Kroner. He sells it to the bookstore for eight Kroner and he sells it to the consumer for 20 Kroner.

SMUGGLING SMUT

Then I was in my hotel room prior to my departure back to the U.S. and a pile of 21 porno picture magazines that cost $1.20 was staring me in the face hours before. In order to get SCREW to pay for them I would have to get them past customs or the Danish would not reimburse me. "Thanks, that's all I'm interested in," I heard him yelling with demented horror.

This may not work for you and it is fish have a nice jail sentence. But, I went into the Danish Hell Mouse which consists of throwing as much contraband as the person or possible without overdoing with normal functions such as shaving and walking.

This is based on the premise that the cops are customs may search your luggage but they only search your body if they suspect you are packing heroin under your balls. So I pictured magazines and sure-porno booklets in my pocket, down my T-shirt and throughout my entire geography.

The happy ending is that report you are reading tomorrow through customs searched my luggage, after all I do look like an aging hippie, I and my cargo of smut got through undetected and made to my home where the Supreme Court has ruled I have a statutory for porno and fuck you sinner District Attorney and other keepers of my morals.

TO THE JUDGES, COPS AND LEGISLATORS OF AMERICA, GO TO COPENHAGEN AND LEARN FOR YOURSELF THAT EROTICISM STILL LIVES, NOT ON THE SHORES, BUT IN IT'S GOOD ENOUGH FOR THE DANES IT SHOULD BE GOOD ENOUGH FOR US. YOU DAY.

A STITCH IN TIME

Dirty Diversions

BY AL GOLDSTEIN

I went to two movies during my five-day stay in Copenhagen. Because the abolition of censored pornography has only taken effect three days earlier, the films were inferior to the still pornographic products but far superior to America's brand of sophisticated film.

Probably within the next six months in America there will be a fast outpouring of good old-fashioned fuck films for the nation's theaters. This is reflected not in a cultural time lag in relatively stodgy, by-heavy-typed film art, it's called a drag.

The first and best of the films is a Danish effort with English subtitles and it's called "Without A Stitch On." It stars Annie Cotton and Di Monde. Who a cast like that have ever to fail?

It is the "story of a young woman's right to seek sexual pleasures." As one enters the theatre the following quote is hung up on the wall: "To abstain from sexual pleasures is an unnatural thing, denouncing from picking flowers, reading, or drinking." by Iven Bjorndeer. (Who the fuck is he anyway?)

I PETER METER
"WITHOUT A STITCH ON" AS FOLLOWS:

Interest (Hilarious) — Ignorant (Hilarious)
Sexuality 45% (normal) — Sexuality 20% (normal)
Technical 10% (possible) — Technical 10% (normal)
100% (possible) — 100% (normal)

This is the highest rating for a film ever awarded by SCREW and only lack of hard cocks and consummated fucking prevented a higher rating.

In spite of that were to be unsubtitled dubbings in Danish films, I never praise them one of an actual story line, interesting character development and beautiful people in conjunction with professional cocks and shooting. If this type of skin-flick ever reaches America, the whole concept field will be made obsolete by sexually giving the viewer his money's worth.

The story is about a respectably mare who fears she can't have an orgasm. She visits her friendly neighborhood doctor. He explains that her only sexual failure was because of the shabby ways of her male lover. One of the original sexy-starved men who turns with the speed of light, an Eros penny night. (Pretty for this high class town, will the temperate move soon?) Anyway, he teaches her that her body is pure and real, which is relevant to the audience and then multitudes of cocks standing at many fast ready positions. The doc also methods right out of the A.M.A.'s bag of tricks and more to suit the heroine's fits. They get hard and the sneaky M.D. then proceeds to go down on the unsuspecting damsel. Now I know why everyone wants to be in medical school, eating out dizzy pussy and getting paid for an office visit at the same time. Best deal since Buckley let me find his St. Christopher medal, at least that's what he called it 'cause it was holy and rusted. Back to the plot. After this infatuation, she then heads for the open road and makes many good screws without the professional help and/or cost of the doc.

This film was so well done that I actually enjoyed awake and got eight hard-ons. This film makes "I Am Curious" look like the dreadful dreck it is. Some hip importer should get this into American hot'ses. Cover Puss makes another feature all Bush-Gone.

"Without A Stitch On" is playing at the Palladium Theatre, which is across from the Palace Hotel. The feature goes on at 7:15 P.M. and 9:19 P.M. I splurged on the only seats and went for 12 Kroner. Each Kroner is worth 14¢ each. Changes can get onto the beautifully appointed theatre for five Kroner by sitting in the first three rows. Most of the seats were in the eight Kroner bracket. A great bargain and that was on a weekend night.

The only complaint I have is about the 11 minutes of commercials that open the bill. Good commercials were done by Volo, Lapton Tea, and Bio-Tex. The Apax commercial worked in any language.

ANOTHER FILM

My second Scandinavian film experience was called "Jeux Etrges Huguenotte." I understand French and Greek sex, but this film was from Sweden and had Danish dubbed in. I didn't understand a thing (from the film except that the spoke well. After about half an hour I threw in Kroner in and left the movie-house more befuddled than ever.

The film cast eight lesbos and played at the Vesterbro Bio. Similar cock sex scenes shown one censored between them. It might have been the Scandinavian version of *Sin and Penny* for all I know. It was a waste of time and the SCREW censor should pass it by and see "Without A Stitch On" a second time.

The bathrooms in the Vesterbro Bio looked like an old West gas chamber. It had a communally pisser and torn just panel on the walls which influenced the floor drawn. (Seriously, would any other paper in America contain such information?)

MAIL

Dear SCREW

Enclosed are some jokes. Probably you've heard them, maybe you haven't. I have laborious jokes at work the joke, and promptly forget them. It's not that I don't worth remembering. I've finally developed a tendency (but not really to say truly worthwhile ones) of forgetting a whole lot of what goes on at work. I shall truly mourn when the company has to retain me every day.

She really disturbed to see that you got "took" by the Canadian who sent you a bunch of tired limericks from "The Pearl." Lucky for you that he didn't give his name and address. If that was given (and the money with the object), then I'll copy the rest of them and send them in. (The third one isn't in "The Pearl," by the way, but I'll bet the other two are.)

Do you know there was nothing in the Chicago papers about the riots? How did I see it IN THE ITEMS Anything. They do so look forward to things like that as their BEHAVIOR indicates.)

Also, per my intended re-mailer, the joint (place) in Chicago that sold your rag is no longer open. I, of course, don't really it, but that's what he says. The guys at work still go upstairs when a copy does show up at O'Hare, Rounds does subscribe (the normal thing), so Rounds do NOT show up at work because I'd never get them back in one piece (if at all), and Chicago is eagerly awaiting "Hair," which finally arrives October (I think) 22 and will probably run into much trouble, especially how the dishonest in which it will play is not very "deep" and most everyone will have a good time.

What I'd like to see is a place like these in London, where nudes pose for a few minutes. They're not to move, of course, and I never came across any featuring men, but apparently the audience has a ball trying to get the girls to move. That was 4 or 5 years ago, so maybe the girls are jumping up and down now (which this guy feels double is hilarious—especially when the film is run in slow-motion).

What I'd really like to do sometime is purchase, say, 50 copies from you and sell them at work, to the girls, of course. I know people who sell just about everything at their place (soldiers, stag movies, their girl friends and sisters, hot merchandise of every description—some even take orders), so why not SCREW? While I'm somewhat of a goody-goody, the cops around the airport wouldn't do much, except perhaps flay me out. But when I know all about the police raid stag parties on the good ol' midnight shift. If you pass through O'Hare, by the way, check out the men's jokes in the janitor, round building. It used to be the women's jokes, NEVER, here I can across a newly-embedded joke on perfectly designed for the dumb-and-tall type of girl! To your suggestions left to you enter it a separate little answer sheet you might not even realize it, all. Four friends and nothing else. Some are better it. We see it, except . . . But it's got to be in it somewhere.

Why I complain? "Screw Goes To Hades" is usually a waste of time. If you're running a letters column there, stick to letters. If your intentions is to run a consumer's guide, then do that. Your present mixed-bag gives me, for one in my asses's eye, though. I CAN see your lips stuck to your left ear, but only if I stand your hide back.

Also, "Sex Addicts" a beginning to put. "You put my balls in your mouth. Then put your mouth on my throat . . ." OUCH. Take the balls out first, maybe bite.

All well, the whole thing is much more interesting than "The National Observer," but similar in a way.

Sincerely,
Ben E. Mussing
Chicago, Illinois

(Ed. Note - Your jokes stunk.)

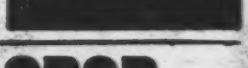
GAY PRAISE

Dear Screw

On behalf of an untold number of Gay people all over the country, I wish to thank you for being so bold as you are. I don't know whether or not this was newspaper such as yours before, but it's one of the most beautiful things that has happened to the straight society yet!

Real Soon

Gay



CROP TEST

Hi there, freaks! Back again with Crop Test No.2. I've found that it doesn't pay to try to trick you Cleavers, because inevitably someone out there has the smarts to come up with the correct answer, and I'd have a hand of shit. The winner of all of $25 is Kenneth Dublisk from Hollywood Calif. Also, the winner of Crop Test No. 1 reported to the pressure. His name was Joel still lol Stanley Nager from Brooklyn. Pssst you both.

In case religious or other superstitious leaders have prevented you from seeing a free copies of SCREW let me reiterate what this Crop Test is all about.

CROP is a printer's term for the part of a large photograph or scene used in the final product. In other words, the picture that ends up in a newspaper or magazine may not resemble the original, but a smaller part or portion of that. What we do is select a cropped of a photograph and you, the guesses must fit in the cut. You see either used along a photograph, chalk or drawing depicting what the entire photo is.

SEND ALL ENTRIES TO: CROP TEST NO. 2, Sibley Tiny Productions, P.O. Box 432, Old Chelsea Sta. NYC, NY 10011.

THIS WEEK'S CLUE: RAVING RAVEN

So, get on your thinking chalk and get cracking. There's a Grand Prize of $25 for the first correct answer

POOR COPY BLURRED PAGES

FUCK BOOKS

COLORFUL COPULATION

by Michael Perkins

Color Climax No. 7. (Pornography in Color.) No publisher listed. Danish. $3.00 each.

Week-End Sex, 25 Ugeblad, Det Skaaler Debat, No. 35. ($5.00)

A black guy in leather and blue jeans, stencilled hair, a tipped glorie cut, so that at least I identify with him, is a mess with a skinny blonde (huge breasts) and a brunette: the scene is motel-modern sleep, and in it he (I do, symbolically) tongues the crotch of the blonde and she his ass. The brunette plays with his hair. They are stealing up, and clothed.

That's the way our story begins, a little color picture book that will blow your mind, if you can get your hands on it. Thirty-two pictures in a wordless story (spares us well done and so healthy (because honest and open) that you come involuntarily every picture or so, that's the Danish *Color Climax* No. 7, one issue of a magazine that is so beautiful that if it were distributed openly, could change this country almost overnight.

However you can find the statistics that tell us that sex crimes have dropped hugely since Denmark dropped its pornography laws. (In Look magazine, for instance.) Here, let me continue with my graphic little story. It is almost proof that pictures are worth thousands of words. Here we have a 32,000-word booklet that is published most predictably on the door entered into it conveys and streams.

Pictures two and three show the blonde taking out here's long peg out, while he pulls up the back of her dress. We get into picture on page four, when the blonde bends and puts the head of his cock in her mouth. The brunette is leaving up his back during this operation. Next shot both women are seated on the bed and the brunette is tasting his taffy. Adoration of the cock continues for the next five pictures. The big Petrified Forest thick-veined black cock is gorging a gorgeous mouth. When he's sufficiently primed, he lands the brunette on top of him, cocks one to her, and then wind-borrows the blonde while she is licking the brunette's cunt. You get the idea, but it goes on and on, in living color, climaxing with a close-up of the brunette's mouth creaming over with black gold.

Not very original, but the pictures, the luxe colored (*wonderful green!*) of other people fuck too, and like it—could mean a lot to almost three-quarters of our population, which really seems to believe that fucking is something you do just to have babies, or you hide, like going to the toilet. Fly to Denmark. Buy two hundred copies of this inexpensive little book, and just rule Topeka, Kansas.

Week-end Sex is almost as good, except that it's not in color. It's more of a magazine, with news, ads for sex stuff, wild cartoons, and photo-sex scenes that employ ballroom full of Danish words that look like Kierkegaard up their above all that fucking. What SCREW might be, if the U.S. were free.

Well, I suppose 'stuff' said, I can't say a thing about the written aspect of these books, because one is swedish (and I'm speechless with admiration) and the other is in Danish, which I don't know a word of. However, considering the good things being done by the Danes, it may be *the* language for our fiends to learn.

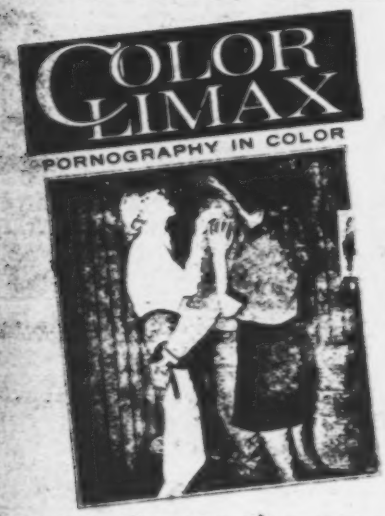
The Screw Fuck Book BESTSELLER LIST

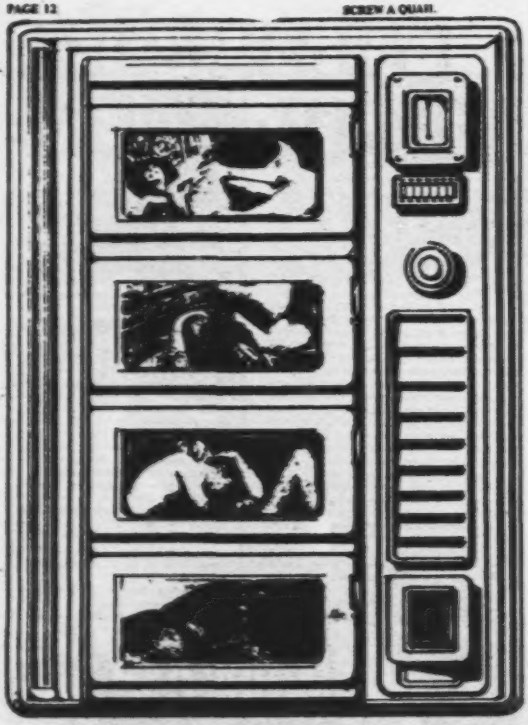
1. The Love Machine by Jacqueline Susann. Simon and Schuster.
2. Portnoy's Complaint by Philip Roth. Random House.
3. The Photographic Manual of Sexual Intercourse by I. R. O'Connor. Part-R Books.
4. Sex Orgies by "H. Courtney." E.L. Publishing Co.
5. I Play By Myself by "Ian Ritt." Cod Publishing Corp.

Also and Recommended:

Ada, or Ardor: A Family Chronicle, by Vladimir Nabokov. (By the author of Lolita, but we forget.)

Sex by David Meltzer. Essex House. (The latest in the Brain-Plant series.)





THE PULL-IT-SIR

by Stephen Donel

New York's erotica scene along 42nd Street and their environs are shabby, seedy, and sordid by any comparison to the shops on Copenhagen's Colgnensgade near the central train station.

There, with all the excellence of Bonwit's or Bendel's, bookstalls have their windows full of the finest quality (at least technically) and imaginative material which cannot fail to boggle and fire the blood to coagulate.

Every conceivable taste—group grope, unisex, S & M, anything, is catered to in black and white or full color. One can shop from the street, determine what he wants, before entering a consultorial of fuck-books and flesh pictures, accessories and aids, and photographic records.

It was only a quirk of international politics which put me, a rather shy, totally unbemused, older (32) man, who receives when asking for "Screw" on 42nd Street, in pornographic heaven. (Before going further, let me insist that I am hopelessly heterosexual.)

It was the misconception of Warsaw pact nations into the affairs of Czechoslovakia that made me an overnight expert on the subject. Last fall, the Czechs, persecutedly because of Russian pressure, were hurting American journalists, even those like myself who were on Holiday, from visiting Smetna's land. Thus, I had an entire day in Hans Christian Andersen's castle and trinketing city.

The whole thing got off to a rather ignoble start when my travel agent booked me into a fog hotel in Copenhagen (I will send the celebrants to anyone requiring it along with a stamped, self-addressed envelope for reply) where I spent three glutinous nights as the only straight guy in the place.

Unable to get a visa for Prague, I wandered down, on the third day of my stay, to the Ambassadeurs "Kobenhavnen" on Studiestraede. After an hour of being persuaded and pounded, followed by the most super disaster of my life, I meandered down past the train stations to the red light district.

Wanna? There it all was. The Vibrants Sex Klinik, The Love Klinik, the multi-lingual Sex Shows, and everything. Shows. I wish I had gone to the bathe afterwards, instead of before.

Right in the storefront, on block legs on the seats or covering the public seats, was the most fantastic selection of erotic photographs this reporter—who has savoured almost every kind of story from blood and gore to confessionism—had ever seen. "Fun Sex", "Boys Together", "Just Us Girls"; the list was endless.

What a mind blowing experience, you will pardon the term, for sailor in the day I had visited the old city, Christianborven, and its famous Vare Fruhen Kirke, Our Savior's Church.

I walked into one store, identified myself as an American journalist, and began asking questions, all the time flashing through one after another photo portrayal of my most fantastic phantasies.

"It's a growing business," Erich Larsen, (Sexy Dane is named Erich Larsen, I am convinced) operator of the store, told me. Mail for used business was coming in getting bigger every minute, I would have understood. "There is much money in porno, with costs us 5 kroner (80 cents) to produce we sell to tourists, mostly Germans, for 30 kroner."

Most of the printed material is often illustrated with the most explicit photographs. The photos are produced in studios in Copenhagen or in Malmo, Sweden, 35 minutes away by hydrofoil. The material, from a technical point, is quality. The photography is first-rate the lighting, appropriate, the writing, careful, and the models young and attractive.

"Young people come in the store and ask how they can pose, I send them down to the main studio," Larsen said. Those of us in America are used to the dingy, poorly-processed, cheap-paper material produced by the French or Mexicans. The Left Bank of Paris is no Copenhagen, by way of comparison, what a rag bandear is to Brooks Brothers.

Danish, and Swedish, produced material has no fat dolls just waiting for another fix, posing to get the money. Nor are there any of the seedy, blurry-eyed whores willing to do anything for a drink. No, there are swinging, groovy looking chicks who appear to actually enjoy themselves and good looking men, most of whom have dicks you would never believe existed.

The photo-booklets all follow essentially the same format: a story of some kind threads its way through the public hair, crowned on most pages, and then past the warm moist folds into divine darkness. In the booklet about a 3-, 5-, or 6-scene engaged in the act of culture or the honourable traditions.

I bought back two photo-story books: one with 4 of its 12 pages in color, the balance in first-grade black and white, and the other—taken from my office desk—complete in four-color format.

One of my booklets shows two chicks and two studs going at it from every conceivable angle. Nothing is omitted including a scene in which one chick bares an unseen thigh from an adjacent panic over her fat and eats her tongue. Another scene, equally as explicit, shows a penis in ascension of ejaculation with semen spurting toward a nearby vagina, and in another frame, a nearby mouth. Another scene had a child impaled, a penis in her anus and in her vagina.

The Copenhagen shows are one-stop shopping centers for all of man's erotic needs. The most unbelievable aids were available at an equally unbelievable price. Special for the Lesbian trade at a mere 30.25 was a soft plastic dildo of monstrous proportions complete with straps. Across the street and complete to the minute detail of pubic hairs, was a life-size mannequin for a mere $300.

With such new freedom, my friend present assumed as I now first-rate pictures of granny before riding policemen's night sticks, young men having themselves in the rectum of other young men, old young men and women, bleeding, sucking, licking, all combining their positions, black men and white women and vice-versa.

Another significant difference: in Copenhagen one sees more of the seedy hustlers such a hook-fest town in New York. In fact, I was so shocked upon entering Vibrants Sex Klinik to find a tall, blond hunk cuff if she could help me that I turned, red-faced, out hastily exited the store.

In Germany, Austria, Berlin, and Holland, the porno stores are essentially the same as here in New York. No one waits at the dropper in Copenhagen to pressure him to buy. If you want to shit, and so need caught, you're welcome.

The thing to think of everything. Should a pre husband—or husband—really hard-up for porno fail the stores closed, wending confident with pink-color inspection windows can supply the need any time, day or night. All that is needed is a handful of 15 kroner pieces.

If the tourist has no wish to leave the store day, he can walk to the block on Hans Christian Andersen Blvd, enter the entrance to Tivoli and find a limited selection of the city's tent. No embarrassment or snickering, and no weird looks from the vendor. Just basic enjoy.

SCREW is proud to present a bi-weekly column by one of the leading authorities in the field of pornography and obscenity in the United States. The author utilizes a nom de plume to give him freedom to comment on current cases.

by Al Pandemyn

CAN IT HAPPEN HAIR?

Suddenly SCREW calls and says, "Write a column on the subject of sex and censorship in Scandinavia." It sounds interesting and intriguing because it brings to mind sin, scandal, and all kinds of nonsense things. It's also nicely alliterative. In fact, with all those "s" sounds you can almost hear the slap-slap of human bodies engaging in sex and you even get onomatopoeia.

However, that's not the way it is at all. In the first place, Scandinavia as taken in its original loose meaning refers to the peninsula of North Europe containing of Sweden and Norway. If you take it as its broader sense, it includes the big bulge of land of Norway, Sweden, Denmark, the adjacent islands like Iceland, and, frequently, Finland. Now from a pornographic point of view each one of these countries has a different outlook on life. For example, the Finns are so uptight about sex and pornography as the Russians and that is very uptight.

Norway has its own peculiar set of restrictions. Sweden is generally easier in the field but, it is only Denmark that has granted legislative freedom to published pornography. The law of Denmark does not include complete sexual freedom. For example, commercial prostitution is still a crime for all those participating and they have many other fun crimes in Shangkai Denmark (the official name). From some of the accounts of this aspect of life in Denmark one would get the impression that from a sexual point of view anything goes in the land of the Danes. But this is not accurate. Only publications—books, magazines, newspaper, pamphlets and other written material—have been exempted from censorship.

It is not generally known but it was not until June of this year that the Danish Parliament got around to legalizing pornographic pictures—until then it was only text. Of course, the police have been winking at pictorial obscenity for two years. When the new law was enacted Justice Minister Knud Thestrup, a Conservative, said, "Governments should not attempt to censor the reading or viewing matter of adults." He added, prophetically, "When pornographic pictures are free I expect their incidence to decline."

I. Who Cares?

In practically every legal argument on pornography and the law in the United States in the past few years the prosecution takes the position that one reason for the crime of obscenity itself is the belief that exposing people to pornographic materials causes them to commit sexual offenses. However, the bulk of the empirical evidence is to the contrary. For example, a comparatively recent publication of the Institute for Sex Research (Kinsey) entitled "Sexual Offenders" indicates that there is no correlation between exposure to pornography and the commission of sex offenses. On the contrary, the researchers at the Institute indicate that it is quite normal for males to collect pornography and it is felt mothers that when they find their children have it they should only recognize that their offspring are normal. Other scientific studies corroborate this finding.

On the other hand, we have such eminent authorities as J. Edgar Hoover who, without particular evidence to support him, maintains most emphatically that pornography breeds crime.

The Danish experiment with free exposure of its people to pornography should be an empirical means to whether it increases or decreases crime. The experiment is now a little over two-years-old and every indication, based upon statistics, is that there is a definite decreased in sex crimes. The latest studies show a decrease of between 10% and 20% in the crime rate in the sex field.

Psychologists and sociologists in Denmark have been questioned on this phenomenon to get an opinion as to whether to relate it to the elimination of censorship or whether there are other causes. In truth, the authorities in this field are divided.

One Danish psychiatrist, Dr. Henry Olsen, author of *Sexual Adjustment in Marriage*, attributes the decrease to the availability of pornography. He says, "It seems obvious to me that instead of committing rape or some other crime the people masturbate. It's a rather innocent way of satisfying a sexual need, don't you think?"

Conversely, Dr. Anders Gorth, an equally renowned authority suggests the modern factors such as birth control, pills, mini-skirts, full employment, greater understanding of sex and "the more relaxed attitude of the public as a whole toward sex fulfillment" all have contributed to the diminution of sex criminality. After all, if the girl will ball him why rape her?

Until there is more study it is obvious that no definitive conclusion can be reached. However, we can cautiously say with some degree of accuracy that "bombarding a people with a flood of pornography does not increase the commission of sexual offenses."

Copenhagen, Capital of Pornography

And, there is no doubt, the people have been bombarded with pornography. With the withdrawal of the last legal bastion, everybody in all the larger cities and in several towns throughout Copenhagen opened up Porno shops where they specialized in the sale of porn magazines, underground cartoons and sexual themes, pornographic paperback books, and similar merchandise. For a time trade was quite brisk. The Danes were unquestionably buying pornography and the publishers of the material were making money out of it. But an interesting phenomenon developed. The profit-making phase of the business began to decline. The indigenous population stopped buying pornography. The major customers for the material were became tourists, especially the tourists from West Germany where this field is still rather strictly regulated. But the tourists were not sufficiently large in number to make the field profitable and this began to tax the ingenuity of the publishers of pornography. Soon ordinary pictorial nudity became mild and the Danish photographers invented "spread"—the picture of the female vagina with the labia pulled apart to expose the clitoris and, in fact, as far up the canal as possible, practically showing the cervix. For a while this took hold and there were new sets after but it did not last long.

Now, the Danish pornographers have discovered something new to them, following the lead of sex consumers from time immemorial. With the Hospik de Dole as an excellent example, the Danish publishers are now printing magazines full of cunt, in full labia, engaged in sucking off persons or otherwise involved in sex-you-like sexual expressions. This will, probably, indicate the exhibition of more of the sex bush for a time but it can't last long. It too must go the way of all pornography—down and out.

The publishers of Danish sex books are complaining loudly and clearly—the people aren't buying this stuff anymore. The porno book stores are increasing the shelf space devoted to ordinary novels and magazines and are giving less and less space to the purely pornographic.

I. A Lesson to All

It is the Counterville and blue-nosed and Father Hill's of the world who ought to study most carefully the Danish experiment. If they did they would learn that if you give the people a surfeit of pornography, society gets in very rapidly. Sex vicarious sex palls very rapidly. Thereafter, it takes humour, artistry, beauty, or some other element to continue its interest. Incidentally, it is in that sentence that we have the difference between SCREW and its imitators.

—30—

F-14

Screw, Issue No. 23

F-15

Screw, Issue No. 23

Mr. PR Presents

FD.

A look at what Sweden has to offer . . . and DENMARK too . . .

The following companies offer highly erotic material:

MAGKASSEN, Nørrebrogade 207, Copenhagen, N. Denmark . . . send $2.00 for their catalog.

SUPREN, 20 Englevænd, Copenhagen, V. Denmark . . . send $3.00 for catalog.

BERDA VERLAG, Postbox 3, Helsinchborg, Denmark . . . send $2.00 for their catalog.

MIDAG AGENCY, P.O. Box 262, Copenhagen, U. Denmark . . . send $1.00 for sample and brochure.

ONE CENTER, Box 34052, Stockholm, 34, Sweden . . . send $3.00 for brochure.

EUROPA, Postbox 25, Copenhagen, Denmark . . . send $2.00 for brochure.

Atmos Prod. A.B., Box 12046, Stockholm, 12, Sweden . . . send $5.00 for catalog.

BELGRAVIA, Box 1154, Huddinge, 1, Sweden . . . send $4.00 for catalog.

TEEN PRESS, Box 11014, 60011, Northsping, Sweden . . . send $2.00 for their catalog.

PRIVATE PRESS AB, Box 17079, S-10462 Stockholm, 17, Sweden . . . send $2.00 for brochure.

For an unusual source of French Tickler, write for prices and information to:
FRANCINE COMPANY, P.O. Box 45, Brooklyn, N.Y. 11210

An instrument that supposedly relieves an initial erection is being offered by:
VIB-E-RECT Co., 6136 Venice Boulevard, Suite 5, Los Angeles, California 90034.
The instrument fits around the male organ while in a flaccid state. At a flick of a control, the battery-operated pulsating unit activates the Vig-E-Rect with 20 sonic-stimulator modules. It comes complete with instructions and a 20-year warranty. Write for prices and more detailed information.

Agent from Denmark . . . and Sweden . . .

SCANDIA PRESS, Box 19, Hedehusene, Denmark . . . send $1.00 for samples and catalog.

and

SARK, Box 2159-EB, Norrkoping, 2, Sweden. send $1.00 for large catalog.

BIMCO, Bernh Olsensvej 22, 2830 Virum, Denmark . . . send $1.00 for illustrated catalog.

A catalog on sex books entitled "SEX BY 69," which is a unique buyers' guide and is illustrated, is only $1.00 . . . and can be ordered from: BOOKS, Dept '69-A, EVO, 1651 Comio Street, Hollywood, California 90028.

It covers every aspect of sexual practices, and tells where to obtain books on sex, that up to now were unobtainable.

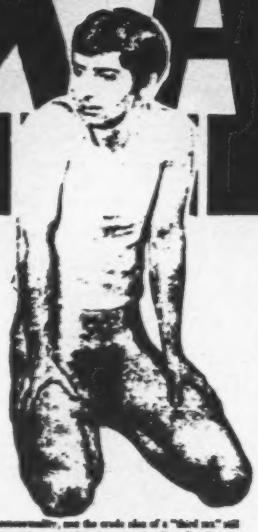
EROS FREE is a relatively new publication stressing sexual freedom, individual rights, a ball, to censorship, and, in short, telling you to do your own thing. It is the official publication of the Society for the Emancipation of Sex in America. Each issue is $1.00, and they can be obtained from: SESA, Box 1497-E, Minneapolis, Minnesota 55440.

Send for this company's FREE brochure, the one you can receive Adult items from 60 different countries. Write: COLLECTORS, Box 3973-CSB, San Diego, California.

That seems to be all for this week. If you have a product, or a service that is of erotic nature, and would be of interest to my readers, write me about it, or if possible, send a sample. If it is a genuine article of merit, I will gladly mention it. If you have a question, or a problem concerning EROTICA, and would like to have a personal, confidential reply, then write me and enclose a self-addressed, stamped envelope. All supplies of information and sources will be held in STRICT CONFIDENCE. Address all mail to: Mister P.R., c/o SCREW, P.O. Box 432, Old Chelsea Station, N.Y.C., N.Y. 10011.

Homosexual Citizen:

SKÅL



by Lige & Jack

Lige and Jack are male lovers who dig life together and think it's a groove. They poke fun at those who would make love a crime, and hope for a day when homosexuals (50%) and homosexuals (100%) are happily integrated. If you have any questions, write Lige and Jack c/o SCREW enclosing a SELF-ADDRESSED, STAMPED envelope for reply. Your questions will be handled to confidence.

The parent of parents, the ludicrous vulgarian, Goldstein, and his co-worker, the lordly pastoral Rustic-child and sex-romantic, Buckley, have given us one fine reeking enjoyment: an article on homosexuality and Scandinavia. Of course, neither of us have been to Scandinavia, but such trivial concerns don't bother the big brains behind the heavy little newspaper we all love so well. Goldstein and Buckley know that gay people have an incredible international grapevine, and that it is only a matter of hours before the Chinese raids on Tibet's gay bars are common knowledge among homosexuals in Huntington, West Virginia.

At first we thought that Goldstein and Buckley wanted an article on scandals in the Navy. Our publishers do trouble to dress the U.S. out out their purportedly obscene 'conquest' (but finally they doubted things: eh you . . . Scandinavia? The home of swedish sex in the western world . . . a reputed paradise for sex deviates and other wonderful people.

Where do you begin when you've never been to the place you are writing about? Well, let's start with what we know about the great Danish homosexual writer, Hans Christian Andersen. He certainly was a happy soul, and he told lots of great fairy tales too! His autobiography lets us know what a fortunate guy he was:

> "My life is a lovely story, happy and full of incident. If, when I was a boy, a good fairy had met me and said, 'Choose now thy own course through life and the objective for which thou wilt strive, and then, according to the development of thy mind, and as circumstances require, I will guide and defend thee to its attainment,' my fate could not, even then, have been directed more happily."

What a happy, well-balanced soul was he! Denmark has got to be some great place to produce a man like that, wouldn't you think? What a nice change from *The Boys In The Band*!

In the early 50's, the word "Copenhagen" was synonymous with "the gayest city in the world." This was because the first famous trans-sexual, good 'ol Christine Jorgensen, got her big fix there. Of course, here in America our citizens were too successfully to know that sex-change have nothing, per se, to do with homosexuality, nor the crude idea of a "third sex" still clogged naive American minds. Rae Bowden, a ribald old hustler of a drag-queen, (who later became a sex change too) capitalized on Copenhagen's reputation when he made some of the first (known?) films directed at the gay community. One of his biggest sellers was "An Evening In Copenhagen" in which Auntie Rae camps and squeals through her long and tiring sequences of little erotic ditties. The last rumor we heard about poor Rae was that she was in a women's prison (ye gads!) in Florida. Poor old soul.

The laws in Denmark and Sweden are quite civilized for homosexuals, although still not quite equal. The problem, it seems, is that the age of consent for heterosexuals is 15. For homosexuals, it's 18. Anybody knows that that's sick discrimination. Dr. Lars Ullerstam, author of "The Erotic Minorities," calls for an end to such barbarism, and who knows but that it won't be long before there's a big change.

Looking across the sea from the American side, however, it seems us to find that Sweden changed her anti-homosexual laws in 1944! Ten years before Britain began to discuss such a possibility, and nearly half a century ahead of the U.S.A. If this nation (the home of the free, etc.) doesn't catch up soon, it a certain that a century will pass before America is able to free her nearly 20 million homosexual citizens from her idiotic laws. In other nations, it seems, the government leads its citizens toward much needed reform. In the U.S.A., however, the federal boys applaud and encourage discrimination and sick out homosexuals in government service to persecute them mercilessly. Let's strike back, O.K.?

Danish and Swedish newspapers carry ads for homosexual lovers, sex-seekers, and lovers, just as SCREW does. There are lots of great erotic books for homosexual voyeurs, and these have existed for many years.

Sweden, Denmark, and Norway have big homophile organizations, quite different from their American counterparts, and much more socially oriented (i.e. parties, dances, theatres, etc.). A little bit like the West Side Discussion Group here in New York, but appealing to younger crowds as well. If you're going over, you might want to contact a few organizations to find out what's happening. Here are their addresses.

Forbundet Af 1948
Postbox 1023
Copenhagen, Denmark

and

Det Norske Forbundet Av 1948
Postboks 1305
Oslo, Norway

Swedish homosexuals of both sexes have their own organization, called the R.F.S.L. (Riksforbundet for Sexuell Likaberattigande) or The National Federation for Sexual Equality. The RFSL encourages contacts between homosexuals, works to advance our acceptance by society. It has a monthly publication, "Contperson," and two restaurant clubs, one for men, the other for women.

If some of you are wandering around a Copenhagen and looking for a bit of action (or even more than that—a whole bunch of it) you'll be glad to know that there are about 28 gay bars in that lively town. If you fancy outdoor sports such as promenading, go to the city's liveliest promenade ground: Langelinie Promenade. It is said that this is quite a place, especially if you wander down to the Little Mermaid statue (that those are sailors in port.

A few of the best? Go to the leisure lizr at 23 Ashoreo. Or try the Ill Toro Hugo at 2 Baldergade. It's got two floors. The top floor a bust. You may do want to try the Amigo Bar at 4 Schoerbergarde. There's the Cozy Bar at 24 Studestrande. It's not so far from one of the city's big Turkish baths, the Bal Kobenhoon at 61 studiestrande. Isn't that quiet? The word for "Bath" in Danish is "Bad." Wonder why?

From all reports, Sweden, Denmark, and Norway are places where homosexuals are treated, for the most part, like people. Which is, of course, only practical, since that's exactly what we are. Nothing more. Nothing less. If you go to Scandinavia, you should have a ball . . . or two. end

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PRICELESS PORNOGRAPHY

Since the opening of The First International Exhibition of Erotic Art at Lund's Konsthall, Lund, Sweden, on May 3rd, 1968, and again at the Kunstmuseum in Aarhus, Denmark, on September 7th, upward of 125,000 (one hundred twenty five thousand!) people have had a chance to see it. In both places, the crowds broke all previous attendance records. Some days saw as many as 3,000 people inside the museum, standing totally unheard of in either place.

Who were the people who came to see the exhibition? Were they old lechers, child-seeking adolescents, and assorted perverts and mental casualties, such as one commonly finds attending the sexploitation cinemas, certain strip-tease clubs, and quite "male performances?"

Not at all. It was a wide cross-section of the Swedish and Danish public that came to see the exhibition of erotic paintings, drawings, etchings, statues, and other forms of erotic art from various periods of time, lands and cultures.

Had they merely wanted to see pornography, they could have saved themselves the trip to the museum: there is plenty of "hard-core" pornography freely available in these two Scandinavian countries. One can buy it at almost any newsstand, to say nothing of the hundreds of specialized "porno-shops" which offer anything from pornographic photos, films, and magazines to electric vibrators and dildoes.

Why then did young and old and so many women as have come to see the erotic art exhibits which - measured in sheer erotic stimulation value - must have been infinitely "milder" and less "exciting" than all the hard-core pornography with which most of the people must have been acquainted.

By talking to many of the visitors to the two museums and by other observations, we think to have found the answer to this at first puzzling question. What the people told us, in essence, was that they were thoroughly bored with ordinary hard-core pornography and that they found it frequently esthetically or morally unacceptable. Hard-core pornography, as it is commonly known today, is usually rather coarse and vulgar. It doesn't have to be that way. But confusion of sexual suppression, censorship, false shame, and a host of traditional taboos have made it to be so. Until recently, no self-respecting photographer, still less any really first-class film-maker, would have lent his good name and skills to producing erotic photographs or movie films, even in Sweden or Denmark. We know this is changing now, and in future one may hopefully see pornographic stills and movies of real quality and artistic merit, just as erotic writings have become much more sophisticated and have moved up on the literary scale, since the liberalization of censorship in Scandinavia and the United States have made such development possible.

Erotic art, on the other hand, is alive with creative inspiration, more often than not esthetically pleasing,

[illegible] appealing to the senses without offending more delicate sensibilities. Especially that of sex and Sweden, and which, as a result, is almost devoid [illegible] of erotic portrayals which know of our physical limitations. Pornographic photos or movies are in a class[illegible] in these respects, since they are, after all, based on the realities of flesh and bone, time and space. In films, it is almost impossible for sexual reality to compete with erotic fantasy, because the latter appeals only only to the senses, but also to the mind and our subsequently to the heart as well.

The war perhaps the reason why not only the most talented Scandinavian poet, but also the international press was overwhelmingly positive about the exhibition. And such international "establishment" mass media as TIME and NEWSWEEK in America, THE GUARDIAN of London, or the German SPIEGEL and STERN reported at some length and favorably about the exhibition.

The press seemed to recognize that erotic art could and frequently does have a social and political point or message far beyond the immediate subject matter portrayed. We need only remind, in this connection, of George Grosz who was competing hypocritical bourgeois society and especially Nazi psychology with his satirical pictures which sometimes included the most outrageous sexual scenes, or Hans Bellmer whose highly perverse and at the same time subversive, disrupting and macabre erotic art was developed as a visual revolt against Nature and Fascism and has always remained a protest against society as it is. One may also think of such younger artists as Ulf Rahnberg in Sweden, Sinel and Jean Jacques Lebel in France, or Peter Abramson in Germany among the generation of "artists engaged" whose art is an expression of the political and cultural revolution of our day.

We do not mean by all this that erotic art needs any kind of apology or reference to "socially redeeming value" to justify its existence. In a world beset by prohibitions and vetoism as never before, the happy appeal to sensual sexual desire offers a ray of hope and a chance to forget and enjoy at least the fleeting moment. If this is escape, it is at least non-destructive to body and mind and seems to us preferable by far to flight into alcohol and drugs, or absorption in violence.

However, not all of erotic art is concerned with what one commonly refers to as "healthy, normal sexuality." This is not different from what is true for literature. This exhibition tried to encompass the role of fetishism, sado-masochism, and other deviations. Nonetheless, we feel that even these aspects of art and literature serve a useful function, first in a harmless release to the artist himself and secondly, by means of various participation, to the public at large.

The First International Exhibition of Erotic Art and the exhibitions following it are commercially not only to be considered from an esthetic and art-critical point of view, but also as a plea for tolerance, for freedom of expression, for mental health, and for social change. They are a timely reminder in a time of violent social conflict that in love and in death we are all alike; that in spite of all other differences, there is one common bond between us; that in the midst of misunderstandings of all kinds, there may be harmony and understanding; that at a moment in history when we are threatened above all by the sheer fact of too many people on too little space, we are still the masters of our destiny by using the sexual drive intelligently and imaginatively for the purpose of recreation, rather than letting it use us for the purpose of blind, confusing, instinctual procreation.

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1605

JIM BUCKLEY and AL GOLDSTEIN,
Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

BRIEF AND APPENDIX FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

RICHARD H. KUH
District Attorney
New York County
Attorney for Respondent
155 Leonard Street
New York, New York 10013
(212) 732-7300

LEWIS R. FRIEDMAN
ANTHONY J. GIBESE
Assistant District Attorneys
Of Counsel

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IN THE

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No. 73-1605

JIM BUCKLEY and AL GOLDSTEIN,
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On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

Preliminary Statement

Jim Buckley and Al Goldstein seek certiorari to review a judgment of the Court of Appeals of the State of New York, rendered December 28, 1973, which affirmed, by a divided Court, a judgment of the Appellate Term of the Supreme Court of the State of New York, First Judicial Department, rendered December 7, 1972, which unanimous-

ly affirmed a judgment of the Criminal Court of the City of New York, New York County, rendered March 30, 1971, convicting them, after trial, of OBSCENITY IN THE SECOND DEGREE (New York Penal Law §235.05). The petitioners were each sentenced to pay fines totaling $1,500. The fines were paid on April 13, 1971.

The Opinions Below

In the Court of Appeals of the State of New York, the case was consolidated with the remand from this Court of *Heller* v. *New York*, 413 U.S. 483 (1973). Accordingly, the case is reported as *People* v. *Heller*, 33 N.Y. 2d 314, 307 N.E. 2d 805, 352 N.Y.S. 2d 601 (1973). The Appellate Term of the Supreme Court of the State of New York, New York County, affirmed the case without opinion, in a decision reported at 72 Misc. 2d 549, 340 N.Y.S. 2d 191 (1972). The opinion of the Criminal Court of the City of New York, New York County, appears at 65 Misc. 2d 917, 320 N.Y.S. 2d 91 (1971). These opinions are reprinted in petitioner's appendices A, B, and D.

Jurisdiction

The petition for certiorari was filed on or about April 27, 1973, pursuant to an order of Mr. Justice MARSHALL which extended the time for filing until this date. The petitioner invokes this Court's jurisdiction on certiorari pursuant to 28 U.S.C. §1257(3).

Statement of the Case

During May, June and August of 1969, a New York City police officer purchased six issues of a publication called "*Screw*" from various newstands in the County of New York. Subtitled "The Sex Review," *Screw* is a weekly periodical devoted exclusively to sexual material, which has roughly the same size, shape and appearance as a tabloid newspaper. The issues purchased, at a price of from 35 to 50 cents each, were Nos. 14, 15, 17, 22, 23 and 24.

The officer took each issue of this publication to a judge of the Criminal Court of the City of New York. Each judge, after examining the tabloid, determined it to be obscene and issued arrest warrants.

Pursuant to stipulations, the obscenity of each of the issues in question was litigated at a single trial. Charged with obscenity in this proceeding were Jim Buckley, publisher of *Screw*, Al Goldstein, the periodical's editor, and Martin Balan, the president of the corporation that printed the tabloid.

After a lengthy and extensive proceeding during which both sides produced numerous expert witnesses and all defendants testified on their own behalf, the three-judge Criminal Court trial panel, in a lengthy *per curiam* opinion, held that the publication was obscene and sentenced defendants Buckley and Goldstein to pay fines totaling $1,500 each. Defendant Balan, *Screw*'s printer, was acquitted, the court finding that the People failed to prove *scienter* beyond a reasonable doubt. *People* v. *Buckley*, 65 Misc.2d 917, 320 N.Y.S. 2d 91 (1971).

The judgment of the Criminal Court was affirmed without opinion by the Appellate Term, First Department. *People* v. *Buckley*, 72 Misc.2d 549, 350 N.Y.S. 2d 191 (1972). On February 22, 1972, leave to appeal to the New York Court of Appeals was granted by a judge of that court.

Before the case could be argued in the New York Court of Appeals, this Court decided *Miller* v. *California*, 413 U.S. 15 (1973), and related obscenity cases, including *Heller* v. *New York*, 413 U.S. 483 (1973). In *Miller* and its companions, this Court announced that state statutes designed to regulate obscene materials must be limited "to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value." 413 U.S. at 24.

At the time of the *Miller* decision, this Court also had before it the case of *Heller* v. *New York*, which involved the question of whether a pre-trial adversary hearing was necessary to determine if a work was obscene for purposes of its seizure. This Court decided that such a hearing was not constitutionally required, as long as the material under consideration had been scrutinized by a judge or magistrate who then found it to be obscene and ordered its seizure. This Court then remanded that case to the New York Court of Appeals "for the sole purpose" of afford-

ing the New York Courts an opportunity to reconsider the New York obscenity statute in the light of the newly announced *Miller* guidelines. 413 U.S. at 494.

The instant case was consolidated with the remand of *Heller* in the New York Court of Appeals. The majority of that court construed the statute, in the light of its own decisions and those of other New York courts, and found that the statute had been judicially limited to render illegal only "hard core pornography". The court further decided that the statute as limited complied with the *Miller* guidelines and was constitutional. On the question of the obscenity of *Screw* magazine, the court specifically found that:

> "The magazine *Screw* is also clearly obscene by any standard. The issues in evidence are crammed with photographs of naked men and women engaging in homosexual and heterosexual acts, in many instances with genitals prominently and lewdly displayed. Drawings and cartoons, are also explicit, exaggerating sexual activity to preposterous degrees. Book and movie reviews are confined only to the works which deal with sex, the worth of a movie being measured by the degree of male erection it is likely to induce. The advertising is no less egregious. The issues contain display ads for what used to be called stag films; sex paraphernalia such as dildoes are prominently illustrated in detail; and personal ads soliciting male and female participation in sex acts of every conceivable sort are written quite unambiguously. Many of the articles are totally sex oriented and are written in the most graphic terms. The use of all the most abominable dirty words is prevalent both in headlines and in text. Indeed, it is hard to conceive of how a publication could reach any

further lows in attempts to appeal to prurient interest." (33 N.Y.2d 314, 333, 307 N.E. 2d 805, 816; 352 N.Y.S. 2d 601, 617 [A14])*

Three judges dissented, opining that the statute, even as judicially construed, was not sufficiently limited to comport with the guidelines of *Miller*.

In the petition for certiorari, Buckley and Goldstein argue that the New York Court of Appeals' decision was erroneous, and the statute cannot be held to have been sufficiently limited to comply with the *Miller* guidelines. They also complain that *Screw* is not obscene.

ARGUMENT

POINT

The New York Court of Appeals, as the final arbiter of New York law, has conclusively determined that New York had judicially limited its obscenity statute to comply with the requirements of *Miller* [answering the petition].

In *Heller* v. *New York*, 413 U.S. 483 (1973), this Court upheld as constitutional the New York practice of submitting obscene materials to a judge for an *ex parte* determination as to their obscenity before seizure. However, this Court then ordered the case remanded "for the sole purpose of offering the New York courts an opportunity to reconsider" the applicable New York obscenity statute in the light of the approved guidelines for the state regula-

* Numbered references preceded by the letter "A" are to petitioner's appendix.

tion of obscene material announced in *Miller* v. *California*, 413 U.S. 15, 24 (1973) and companion cases. As stated in *Miller*:

> "The basic guidelines for the trier of fact must be: (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest, *Kois* v. *Wisconsin, supra*, at 230, quoting *Roth* v. *United States, supra* at 489; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

In *Miller*, this Court specifically announced that if the applicable state law "as written or authoritatively construed" comported with these guidelines, "the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected * * *." 413 U.S. at 25.

In the instant case, which was combined for argument in the New York Court of Appeals with the *Heller* case on remand from this Court, the court exhaustively examined its own precedents and conclusively determined that the definition of obscene material contained in the New York Penal Law §235.00 had been judicially limited by decisions of the New York courts to apply only to "hard core pornography." The court further decided that as limited, the statute thus complied with the *Miller* guidelines. *People* v. *Heller*, 33 N.Y.2d at 315-334, 307 N.E. 2d at 807-817, 352 N.Y.S. 2d at 607-618 (A1-19). The petitioner now claims that this decision was incorrect, and that the statute cannot be read to comply with *Miller*. He also claims that the material for which he was prosecuted, *Screw Magazine*, is not obscene. Petitioner is wrong.

At the very outset, it might be noted that the major question raised in the instant petition, the constitutionality of Penal Law §235.00, may soon be moot. A recent bill to amend the New York Penal Law and change the definition of obscenity has passed both houses of the New York Legislature and is now awaiting signature by the state's governor, an event which is expected to occur no later than June 15. This bill (No. 31033-A of 1974), substantially restates the *Miller* guidelines and would enact them into law as the definition of obscenity in New York. The bill is reproduced as Exhibit A to this brief.*

In any event, even were the New York law not to change, the New York Court of Appeals is the ultimate arbiter of New York law and, acting as such, has authoritatively construed its own prior decisions and those of other New York courts to have limited the reach of the New York obscenity statute to "hard core pornography," a meaning which it held to be identical to this Court's definition of "works which depict or describe sexual conduct." This determination is of course the "last word" on the question of the meaning of prior New York law, and petitioner fails to show any permissible method by which this Court can re-review the past decisions of the New York courts to reach a different result. And, while the conclusion of the Court of Appeals that the statute as limited complies with the *Miller* guidelines is potentially reviewable in this Court as a matter of constitutional interpretation, respondent relies upon the opinion of the New York Court of Appeals in this regard.

* If the bill is vetoed by Governor Wilson, the respondent will, by letter, promptly notify this Court.

However, appellant notes that this Court has recently granted certiorari or heard argument in other obscenity cases, concluding that "this case deserves the same consideration" (petition, p. 14). These cases, however, involved different issues. In *Jenkins* v. *Georgia*, No. 73-557, argued 4/15/74, the principal issue appeared to be whether the First Amendment question of "serious literary and artistic value" could be safely left to the consideration of a local community jury in Georgia, which found such values lacking in the film "Carnal Knowledge." However, in the course of its decision of the instant case, the New York Court of Appeals announced that a "state-wide standard of obscenity would be applied in New York," and thus this question is not presented by the instant case. Moreover, it might also be noted that the Court of Appeals specifically determined that *Screw Magazine* would be "obscene by *any* standard," and petitioner thus cannot be heard to seriously complain that the material under consideration, which is a tabloid newspaper exclusively concerned with sexual material, possesses the sort of non-sexual literary or scientific merit present in a film like "Carnal Knowledge."

Further, in *Hamling* v. *United States*, No. 73-507, argued 4/15/74, this Court had before it the question of whether the federal obscenity statute, 18 U.S.C. §1461, on its face and as construed, applied to the defendant's pre-*Miller* conduct. Of course, this Court may review the prior decisions of the federal courts and itself determine whether those decisions had sufficiently limited the federal statute to render that statute constitutional in the light of *Miller*. The instant case, however, involves a question of state precedent, which may only be authoritatively construed by the state's highest court, as was done herein.

Lastly, in *Cryan* v. *Namar Theatres, Inc.*, No. 73-711, this Court noted probable jurisdiction to review a challenge in the federal courts to the New Jersey obscenity statute, which has not been specifically construed by the highest court of that state in the light of *Miller*. Thus, this case also presents a different question than that presented herein.

Conclusion

The petition should be denied.

Respectfully submitted,

RICHARD H. KUH
District Attorney
New York County

LEWIS R. FRIEDMAN
ANTHONY J. GIRESE
Assistant District Attorneys
Of Counsel

APPENDIX

Exhibit A

When bill #31033-A is signed by the Governor of the State of New York, the definition of obscenity contained in the New York Penal Law [§235.00] will be as follows:

"§235.00 Obscenity; definitions of terms

The following definitions are applicable to sections 235.05, 235.10, and 235.15:

1. 'Obscene.' Any material or performance is 'obscene' if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, sodomy, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.

2. 'Material' means anything tangible which is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner.

3. 'Performance' means any play, motion picture, dance, or other exhibition performed before an audience.

4. 'Promote' means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

5. 'Wholesale promote' means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate or to offer or agree to do the same for purposes of resale.

6. 'Simulated' means the explicit depiction or description of any of the types of conduct set forth in clause (b) of subdivision one of this section, which creates the appearance of such conduct.

7. 'Sodomy' means any of the types of sexual conduct defined in subdivision two of section 130.00* provided, however, that in any prosecution under this article the marital status of the persons engaged in such conduct shall be irrelevant and shall not be considered."

* That section provides that:

"'Deviate sexual intercourse' means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva."

CERTIORARI DENIED